STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Israel Bucio,
Petitioner,

vs.
Shark Transport Services,
Respondent,

NO: 09 WC 11161

14IWCC0064

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of medical expenses, causal connection, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed September 10, 2012 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

Bond for removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $22,600.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 03 2014

Mario Basurto

MB/mam
O: 1/16/14
43

David L. Gore

Michael J. Brennan

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

BUCIO, ISREAL
Employee/Petitioner

Case# **09WC011161**

14IWCC0064

SHARK TRANSPORT SERVICES
Employer/Respondent

On 9/10/2012, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2830 THE MARGOLIS FIRM PC
CHARLES J CANDIANO
55 W MONROE ST SUITE 2455
CHICAGO, IL 60603

1973 ATSAVES, LOUIS G LTD
200 W JACKSON BLVD
SUITE 1050
CHICAGO, IL 60606

14IWCC0064

STATE OF ILLINOIS)
)SS.
COUNTY OF COOK)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Israel Bucio
Employee/Petitioner

v.

Shark Transport Services
Employer/Respondent

Case # 09 WC 11161

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Carolyn Doherty**, Arbitrator of the Commission, in the city of **Chicago**, on **8/7/12**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **2/27/09**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$29,480.00**; the average weekly wage was **$600.00**.

On the date of accident, Petitioner was **33** years of age, ***married*** with **4** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$n/a** for TTD, **$n/a** for TPD, **$n/a** for maintenance, and **$n/a** for other benefits, for a total credit of **$n/a**.

Respondent is entitled to a credit of **$n/a** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner permanent partial disability benefits of $360.00/week for 62.5 weeks, because the injuries sustained caused the 12.5% loss of the person as a whole, as provided in Section 8(d)2 of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Carolyn Doherty
Signature of Arbitrator

9/10/12
Date

SEP 10 2012

FINDINGS OF FACT

This matter was previously tried under Section 19(b) on 10/6/10. Respondent sought review of the Arbitrator's 19 (b) Decision. The Commission modified the Decision on the issue of medical expenses and affirmed and adopted all other findings of the Arbitrator. The case was remanded to this Arbitrator for further hearing.

The remand hearing was held on August 7, 2012. Petitioner again testified that on 2/27/09, he sustained work related injuries to his low back as a result of lifting at work. Petitioner underwent an MRI on 3/27/09 which indicated a 4 to 5mm herniation at L5-S1. Petitioner received conservative care in the form of physical therapy and a series of epidural injections. Petitioner returned to work for Respondent performing lighter duty welding work prior to eventually leaving Respondent's employ in 2010.

Place at issue at the remand hearing of 8/7/12 was the nature and extent of Petitioner's injury. In addition, Petitioner also requested medical expenses. Specifically, Petitioner requested a medical bill from Marque Medicos reflecting charges of $22,875.00 and a medical fee schedule allowance of $13,351.49. PX 5. The bill covers services rendered Petitioner from March 2009 through May 2009. The bill at PX 5 was submitted at the time of the 19(b) hearing and awarded by the Arbitrator. However, on Review, the Commission vacated the award of that bill from the Marque Medicos facility stating that no medical records were submitted at Arbitration to support that bill. At the hearing on remand, Petitioner again submitted the same Marque Medicos bill along with medical records to support the charges. PX 6. These medical records were not submitted at the 19(b) hearing on 10/6/10.

At the hearing on remand, Petitioner placed two additional medical bills at issue that were not presented at the prior 19(b) hearing. Petitioner submitted a bill from Prescription Partners in the amount of $526.30 reflecting prescription medication prescribed on 4/16/09. PX 10. Lastly, Petitioner submitted a bill from Delaware Place MRI totaling $1,839.18 reduced to $1,625.63 pursuant to the fee schedule. PX 8. The supporting MRI report dated 3/27/09 was also submitted. PX 9.

Petitioner testified that he currently experiences pain on a daily basis. He testified that the pain starts out light but gets bad after work. Petitioner testified that he bends at work and when he stands up he feels pain in his low back. Petitioner testified that he takes pain medication. Petitioner currently performs that same type of mechanic work that he did for Respondent and has worked full time for the last 2 years. Finally, Petitioner testified that he has not received any medical treatment for his back since the 19(b) hearing in 2010.

CONCLUSIONS OF LAW

The above findings of fact are incorporated into the following conclusions of law.

F. Is Petitioner's current condition of ill-being causally related to the injury?

To the extent Respondent raised the issue of causal connection at the hearing on remand, the Arbitrator finds that Petitioner's current condition of ill-being remains a disc herniation at L5-S1, as identified at the prior 19(b) hearing and affirmed by the Commission on Review.

J. Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?

The Arbitrator finds that Petitioner is not entitled to the medical bill from Marque Medicos submitted at the hearing on remand at PX 5. In so finding, the Arbitrator notes that all issues with regard to the Marque Medicos bill were presented before the Arbitrator and reviewed by the Commission. The Commission vacated the Arbitrator's award of the Marque Medicos charges at PX 5. For this Arbitrator to award the bill at PX 5 would be to allow the re-litigation of a closed issue.

The Arbitrator further finds that Petitioner is not entitled to the prescription and medical (MRI) bills submitted at PX 8 and PX 10. In so finding, the Arbitrator notes that although these bills reflect conditions, treatment and services which pre-date and were at issue at the first hearing in 2010, there is no indication that these two bills were presented at that 19(b) hearing.

L. What is the nature and extent of Petitioner's injury?

The Arbitrator notes that Petitioner sustained a disc herniation at L5-S1 as a result of this accident. He received conservative treatment and returned to work performing the duties of a mechanic. Petitioner currently experiences pain on a daily basis which progressively worsens throughout the work day. Petitioner testified that he bends at work and when he stands up he feels pain in his low back. Petitioner takes pain medication but has not received treatment since 2010 for his injury. Based on the foregoing, the Arbitrator finds that Petitioner sustained 12.5% loss of use of the person as a whole pursuant to Section 8(d)(2) of the Act.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Katherine A. Bergmann,

Petitioner,

vs.

NO: 12 WC 31282

14IWCC0065

St. Elizabeth's Hospital,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of temporary total disability, causal connection, medical expenses, prospective medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 2, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $28,400.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 0 3 2014

MB/mam
O:1/23/14
43

Mario Basurto

David L. Gore

Daniel R. Donohoo

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

BERGMANN, KATHERINE A
Employee/Petitioner

Case# 12WC031282

14IWCC0065

ST ELIZABETH'S HOSPITAL
Employer/Respondent

On 4/2/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0071 BONIFIELD & ROSENSTENGEL PC
JON ROSENSTENGEL
16 E MAIN ST
BELLEVILLE, IL 62220

0164 DONOVAN ROSE NESTER PC
BRENDAN NESTER
201 S ILLINOIS ST
BELLEVILLE, IL 62220

14IWCC0065

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Katherine A. Bergmann
Employee/Petitioner

v.

St. Elizabeth's Hospital
Employer/Respondent

Case # 12 WC 31282

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on January 29, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, January 13, 2012, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $64,969.84; the average weekly wage was $1,249.42.

On the date of accident, Petitioner was 51 years of age, married with 1 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and amounts paid for other benefits, for a total credit of amounts paid.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 7 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

Respondent shall authorize and make payment for prospective medical treatment as recommended by Dr. Yazdi.

Respondent shall pay Petitioner temporary total disability benefits of $832.95 per week for 34 weeks commencing June 6, 2012, through January 29, 2013, as provided by Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator
ICArbDec19(b)

March 29, 2013
Date

APR 2 - 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged she sustained an accidental injury arising out of and in the course of her employment for Respondent on January 13, 2012. According to the Application, Petitioner sustained an injury to her back when her chair rolled out from under her causing her to fall. Respondent stipulated that Petitioner sustained a work–related injury on January 13, 2012; however, Respondent disputed liability on the basis of causal relationship. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of temporary total disability benefits, medical, as well as prospective medical treatment.

Petitioner was a registered nurse and, in January, 2012, Petitioner worked for Respondent in the medical surgical wing of the hospital. Petitioner's job was to provide care for patients recovering from surgeries. On January 13, 2012, Petitioner was sitting at the nurses' station and was checking various patient charts. The charts are kept in a rack and as Petitioner was in the process of returning one of the charts to the rack, the chair that she was seated in (the chair is on rollers) slid out from behind her causing her to fall. When Petitioner fell, she landed on the concrete floor and experienced pain to her buttocks, left hip and low back. Petitioner also experienced some pain and discomfort in the right shoulder.

Prior to the accident of January 13, 2012, Petitioner had significant back problems. In the 1980's, Petitioner had back surgery which consisted of a fusion at the L5–S1 level. There were no medical records tendered into evidence at the trial of this case in regard to the prior surgery; however, Petitioner apparently made a good recovery and was able to return to work without restrictions.

On August 23, 2011, Petitioner was seen by Dr. Joseph Yazdi, a neurosurgeon, and, at that time, Petitioner complained of a nearly two-year history of low back pain with radiation into the bilateral buttocks. Prior to being seen by Dr. Yazdi, Petitioner had physical therapy, injections and facet blocks but did not experience any significant relief of her symptoms. Dr. Yazdi examined Petitioner and obtained x-rays of the low back which revealed a spondylolisthesis at L4–L5. Dr. Yazdi recommended a posterior fusion at that level with pedicle screw fixation. On September 8, 2011, Dr. Yazdi performed surgery consisting of a posterior fusion at L4–L5 with pedicle screw fixation. Interlocking rods and four screws were used in this procedure. Following the surgery, Dr. Yazdi prescribed physical therapy and some pain medication and Petitioner made a good recovery. X-rays obtained on October 25, 2011, noted the presence of the rods and screws at the fused L4–L5 level. The radiologist's report did not note that there was any loosening of the screws. Dr. Yazdi noted that the x-rays revealed proper placement of the instrumentation.

Dr. Yazdi saw Petitioner again on November 22, 2011, and she still had complaints of a dull, aching pain in her back worsened with increased activity; however, Petitioner's leg pain had resolved. Dr. Yazdi released Petitioner to return to work without restrictions and also prescribed a back brace. Petitioner testified that she returned to work following this release from Dr. Yazdi.

At trial, Petitioner testified that following the accident of January 13, 2012, she experienced pain in the low back and left leg as well as some right shoulder pain. She described the symptoms as

being a "new pain" because the pain she previously experienced stopped at the buttocks. Petitioner notified her supervisor and went to the ER. X-rays obtained on January 13, 2012, did not reveal any new pathology and noted the presence of "unremarkable posterior fusion hardware of L4–5." There was nothing noted about any loosening of the screws used in the prior fusion.

Subsequent to the accident, Petitioner was seen by Dr. Yazdi on January 24, 2012, and he noted that prior to the accident of January 13, 2012, Petitioner had minimal pain, about 2/10. Following the accident, Petitioner's pain increased significantly and Dr. Yazdi initially tried to treat her conservatively referring her to Dr. William Thom, for pain management. Petitioner underwent a series of injections and facet blocks but did not get any significant relief of her symptoms. On March 19, 2012, Dr. Yazdi obtained another x-ray which noted the prior fusion at L4–L5 was unremarkable. It also noted that "surgical hardware appears intact." Again, there was no indication of any loosening of the metal screws. Dr. Yazdi then obtained an MRI of the lumbar spine on March 24, 2012, which noted the L4–L5 fusion and that the hardware was in place. Petitioner continued to receive conservative treatment and remained at work on a light duty basis.

Dr. Yazdi saw Petitioner on May 22, 2012, and Petitioner continued to be symptomatic. At that time Dr. Yazdi opined that the "...fusion probably got disrupted when she fell at work." He recommended an interbody fusion at that same level. A CT scan of the lumbar spine was obtained on June 11, 2012, and it noted that the anterolisthesis at L4 was stable and that there was no evidence of disc herniations. Again, there was no reference to any loosening of the screws used to fuse L4–L5. Dr. Yazdi saw Petitioner again on June 13, 2012, and he reviewed the CT scan. Dr. Yazdi specifically noted that there were no signs of any loosening of the screws and he did not observe any halo area around them. Dr. Yazdi opined that Petitioner had a pseudoarthrosis and that the only way to fix it was a lateral fusion at L4–L5 with possible additional hardware.

Dr. Yazdi authorized Petitioner to be off work effective June 6, 2012, and he performed surgery on June 28, 2012. The surgical procedure consisted of an interbody fusion and lateral screw fixation at that level as well as a discectomy and disc implant. Following the surgery, Dr. Yazdi prescribed physical therapy and authorized Petitioner to be off work. Dr. Yazdi most recently saw Petitioner on January 22, 2013, and he continued to authorize her to be off work and stated that the next appointment would be in April, 2013.

Dr. Yazdi was deposed on November 16, 2012, and his deposition testimony was received into evidence at trial. Dr. Yazdi's testimony was consistent with the information contained in his medical records. Dr. Yazdi reaffirmed his opinion that the accident of January 13, 2012, caused the pseudoarthrosis at L4–L5 that he treated. At the time he was deposed, Dr. Yazdi stated that Petitioner was not at maximum medical improvement and he did not know what her permanent restrictions would be.

In regard to Petitioner's condition prior to this accident, Dr. Yazdi testified that he had the opportunity to both examine Petitioner and observe her at work following the prior fusion surgery. Dr. Yazdi testified that Petitioner she seemed to be doing well prior to the accident of January 13, 2012.

In regard to the stability of the hardware from the prior fusion, Dr. Yazdi testified that he did not observe any loosening of the screws at L4–L5 and that he personally reviewed all of the x-rays and scans that had been performed on the Petitioner and that he did just did not simply rely on the reports of the radiologist.

At the direction of Respondent, Petitioner was examined by Dr. Daniel Kitchens, a neurosurgeon, on May 23, 2012. Dr. Kitchens obtained a history from Petitioner, examined her and also reviewed various medical records provided to him. Dr. Kitchens also reviewed the x-ray of March 19, 2012, and the MRI of March 24, 2012, and opined that these revealed some loosening of the left L5 pedicle screw. He opined that Petitioner's non–union at L4–L5 was due to the complications following the September, 2011, surgery and were not causally related to the accident of January 13, 2012.

Dr. Kitchens was deposed on November 28, 2012, and his deposition testimony was received into evidence. Although Petitioner's surgery occurred subsequent to Dr. Kitchens' examination of her, he did review the surgical report and opined that even if Petitioner had not sustained the fall on January 13, 2012, she would have still required this additional surgical procedure. On cross-examination, Dr. Kitchens opined that even though Petitioner's symptoms were less after the prior surgery and greater following the accident that this did not have any particular significance in respect to his opinion of there being a non–union. Dr. Kitchens could not testify when the pedicle screw became loose other than the fact that it was sometime before the x-ray of March, 2012.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of a pseudoarthrosis at L4–L5 is causally related to the accident of January 13, 2012.

In support of this conclusion the Arbitrator notes the following:

There is no dispute that Petitioner sustained a work–related injury on January 13, 2012. Further, Petitioner's testimony that her back symptoms had been improving prior to the accident and that they significantly increased afterward was unrebutted.

The Arbitrator finds the opinion of the treating physician, Dr. Yazdi, to be more credible than that of Respondent's examining physician, Dr. Kitchens. Dr. Kitchens opined that he observed loosening of the left L5 pedicle screw when he reviewed the x-ray of March 19, 2012, and the MRI of March 24, 2012; however, neither the radiologist nor Dr. Yazdi, both of whom reviewed the same studies, made such a finding. Further, other diagnostic studies were performed on Petitioner both before and after the accident of January 13, 2012, and no loosening of any of the pedicle screws were noted either by the radiologist or Dr. Yazdi. When Dr. Yazdi was deposed, he specifically noted that there was no loosening of any of the screws.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical services as identified in Petitioner's Exhibit 7 as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to prospective medical treatment as recommended by Dr. Yazdi.

In support of this conclusion the Arbitrator notes the following:

Petitioner remains under Dr. Yazdi's care at this time and is presently scheduled to see him sometime in April, 2013. Petitioner is not yet at maximum medical improvement.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner is entitled to payment of temporary total disability benefits of 34 weeks commencing June 6, 2012, through January 29, 2013, as provided by Section 8(b) of the Act. Respondent shall receive credit for amounts paid as short-term and long-term disability benefits as provided by Section 8(j) of the Act.

In support of this conclusion the Arbitrator notes the following:

Dr. Yazdi authorized Petitioner to be off work from June 6, 2012, to the present and there is no evidence to the contrary.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gerald Elsner,

Petitioner,

vs. NO: 12 WC 29596

14IWCC0066

Cook County Sheriff's Office,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of medical expenses, temporary total disability, permanent partial disability, causal connection and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed Februaryary 28, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 03 2014

Mario Basurto

David L. Gore

Michael J. Brennan

MB/mam
O: 1/16/14
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

ELSNER, GERALD
Employee/Petitioner

Case# **12WC029596**

14IWCC0066

COOK COUNTY SHERIFF'S OFFICE
Employer/Respondent

On 2/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.13% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

2221 VRDOLYAK LAW GROUP LLC
MICHAEL P CASEY
741 N DEARBORN 3RD FL
CHICAGO, IL 60654

0132 STATES ATTORNEY OF COOK COUNTY
JEREMY SCHWARTZ
500 DALEY CENTER ROOM 508
CHICAGO, IL 60602

14IWCC0066

STATE OF ILLINOIS)
)SS.
COUNTY OF Cook)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
X☐ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Gerard Elsner
Employee/Petitioner

v.

Cook County Sheriff's Office
Employer/Respondent

Case # **12** WC **29596**

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Molly Mason**, Arbitrator of the Commission, in the city of **Chicago**, on **2/4/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On **5/15/12**, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

Petitioner provided Respondent with timely notice of his claimed left foot injury. Arb Exh 1.

For the reasons set forth in the attached conclusions of law, the Arbitrator finds that Petitioner's participation in Respondent's "walking program" in April and May of 2012 was incidental to his job and that a claim for an injury stemming from that participation would not be barred by Section 11 of the Act. The Arbitrator further finds, however, that Petitioner failed to prove causation as to the MRSA infection diagnosed in August of 2012, the need for surgery and his current left foot condition of ill-being. Having found that Petitioner failed to establish causation, the Arbitrator finds it unnecessary to address the remaining disputed issues.

In the year preceding the injury, Petitioner earned $**70,000**; the average weekly wage was $**1,346.15**.

As of 5/15/12, Petitioner was **64** years of age, ***married*** with **0** dependent children.

ORDER :

FOR THE REASONS SET FORTH IN THE ATTACHED CONCLUSIONS OF LAW, THE ARBITRATOR FINDS THAT PETITIONER FAILED TO MEET HIS BURDEN OF PROOF ON THE ISSUE OF CAUSAL CONNECTION. COMPENSATION IS DENIED.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Molly E Mason
Signature of Arbitrator

2/27/13
Date

FEB 28 2013

Gerard Elsner v. Cook County Sheriff's Office
12 WC 29596

Arbitrator's Findings of Fact

Petitioner testified he began working as a program coordinator for Respondent about four and a half years ago. T. 14. As of early 2012, he worked as a program coordinator for Respondent's Department of Corrections. His job involved enhancing employee morale and wellness so as to reduce absenteeism. T. 15. He was also in charge of the Sheriff's fitness gymnasium, where he physically trained Respondent employees. T. 43. His scheduled work hours were from 6:00 AM to about 2:30 PM. T. 44-45.

Petitioner testified he is about six feet, one inch tall. As of May 15, 2012, he weighed about 235 pounds. T. 12-13.

Petitioner denied having any left foot problems prior to February of 2012. He also denied being diagnosed with diabetes or having any problems with blisters before February or March of 2012. T. 13-14.

Petitioner testified he attended a work meeting in April 2012 at the direction of his immediate supervisor, Patricia Horne [hereafter referred to as "Horne"]. Prior to this meeting, Cook County Board President Toni Preckwinkle issued a statement indicating she wanted to put an employee wellness program into place. Petitioner testified the meeting was held in Director Jackson's office. In addition to Petitioner, Horne and Jackson, Petitioner's associate, Nora Fitzpatrick, and the jail's social worker, Elli Montgomery, attended the meeting. T. 16. At the meeting, Petitioner came up with the idea of a walking program. Petitioner testified this program fit the bill in the sense that it could be initiated right away, was "low risk" and did not require any facilities or funding. T. 19-20. Petitioner testified that, when he left the meeting, Horne "high-fived" him for "coming [up] with this great idea immediately." T. 20. At some later point, Horne attended a directors' meeting and then formally approved Petitioner's idea. After Petitioner received the go-ahead from Horne, he and Fitzpatrick developed a flyer so as to alert employees as to when and where to meet in order to participate in the walking program. Petitioner identified PX 1 as a copy of this flyer. The flyer has the following heading: "Sheriff's Summer Walking Club." The brochure directs "all walkers" to "meet Jerry at the white gate in front of post 5" at any of the following times: 6:00 AM, 9:00 AM and 11:00 AM. PX 1.

Petitioner testified he submitted the flyer to Horne for her approval. Horne, in turn, presented the flyer to Hickerson, the former executive director of Respondent's jail, for his approval. Petitioner testified it has always been Respondent's policy that nothing can be posted without the approval of the jail's executive director. After Hickerson gave his approval, the flyer "was read at roll calls" and posted throughout Respondent's eleven buildings. T. 26.

Petitioner testified it was Horne who decided that the walking program was to take place at 6:00 AM, 9:00 AM and 11:00 AM daily. According to Petitioner, Horne selected these

start times so as to maximize employee participation. Sworn personnel start their shifts at 6:00 AM, non-sworn personnel start at 9:00 AM and both types of personnel come and go at 11:00 AM. T. 28.

Per the flyer, the employees who wanted to participate in the walking program were required to meet "Jerry," i.e., Petitioner, at "the white gate in front of Post 5" at any one of the foregoing start times. Petitioner testified that Post 5 is "the main entrance" to Respondent's Department of Corrections. T. 29.

Petitioner testified he was required to present himself at the white gate in front of Post 5 at the designated start times because he was "in charge of the walk[s]." Participation on the part of other Respondent employees was voluntary. T. 29. Petitioner testified he acted as the "rear guard" while his associate, Nora Fitzpatrick, was out in front. Petitioner testified he was required to participate in the walk so as keep pace and ensure no participant strayed or was injured. Petitioner was also charged with the responsibility of getting everyone "back on time." T. 30-31. On the very first day of the program, he arrived at work at 5:30 AM, as was his custom, so as not to miss anyone who might show up for the 6:00 AM walk. T. 44.

Petitioner testified that Horne and Respondent's other directors were aware of the manner in which he guided the group. Petitioner identified PX 2 as a picture of him, Nora Fitzpatrick and other participants in an 11:00 AM walk. He and Nora Fitzpatrick can be seen wearing uniforms they purchased so that they would "stand out" from the other participants. The uniforms they purchased bore Respondent's logo, i.e., a sheriff's star. One of the participants shown in PX 2 is Dan Marici, the "assistant executive director" of the jail. Marici is the individual wearing a star on his tie. T. 32. The walk depicted in PX 2 took place in March or April of 2012, near the beginning of the walking program.

Petitioner identified PX 3 as a picture of him, Nora Fitzpatrick and another individual participating in a 6:00 AM walk on one of the first days of the walking program. T. 34.

Petitioner testified that the participants walked on a sidewalk that was just beyond the wall of Respondent's property. The north end of the property was actually owned by the City rather than Respondent. The meeting place, i.e., the "white gate," was on Respondent's premises. T. 36.

Petitioner testified that, when the program began, walks were offered at 6:00 AM, 9:00 AM and 11:00 AM each day, Monday through Friday. Each walk was a mile and a half long. When the program first got underway, Petitioner and Nora Fitzpatrick participated in each of the scheduled walks. Petitioner wore hiking boots during each walk. About a month into the program, Petitioner noticed a blister on the sole of his left foot. The blister was large when Petitioner first noticed it. T. 13, 37. This blister hurt a little but Petitioner did not think it was a big deal. He showed the blister to others, including Bill, a director. T. 39. He continued to lead the scheduled walks, thinking the blister would go away. T. 38.

Petitioner testified that, on the morning of Sunday, May 20, 2012, the blister broke. He went to his HMO physician. He testified he told the physician he was doing "fitness training for the Sheriff's Department." T. 40. The physician lanced the blister, cut off skin, applied a bandage and told Petitioner to keep an eye on the wound. T. 40.

Records from Adventist Health Partners reflect that Petitioner saw Sean Miran, D.O. on May 20, 2012 and indicated he "developed a blister due to training." The doctor noted that the blister broke the preceding Friday. The doctor also noted that the blister occurred in the context of "immune compromise" based on Petitioner's long-term usage of IV antibiotics for recurrent right leg cellulitis. [A previous treatment note dated May 14, 2012 reflects that Petitioner was using a PICC line for IV antibiotic therapy due to the cellulitis.]

When Dr. Miran examined Petitioner on May 20, 2012, he noted a 4-centimeter flesh-colored lesion on the sole of Petitioner's left foot. He described the lesion as "blister type." He "de-roofed" the blister, using sterile scissors and forceps, and instructed Petitioner to "continue wound care." PX 5.

Petitioner testified that, to his recollection, Dr. Miran did not prescribe any medication or schedule a follow-up visit.

Petitioner reported to work as usual the next day, Monday, May 21, 2012, but never again participated in the scheduled walks because his foot was bleeding. T. 41-42, 44. The blister "became big" and developed into an ulcer that "went deep into the skin, almost to the bone." T. 41.

On May 31, 2012, Petitioner returned to Adventist Health Partners and saw a different physician, Joel Brown, M.D. Dr. Brown's history reflects that Petitioner "was training in his combat boots" two weeks earlier and noticed a "giant blister on the plantar surface of his left foot." Dr. Brown indicated this blister popped and caused a pressure ulcer, which made it difficult for Petitioner to walk. Dr. Brown also noted that Petitioner was "still on antibiotics for his right leg." The "physical exam" portion of Dr. Brown's note is blank. Dr. Brown assessed Petitioner with an acute friction blister of the sole. Elsewhere in the note, he described the problem as mild in nature. The doctor's treatment is described only as "foot ulcer education." Petitioner testified the doctor did not give him any medication and said only "we have to keep watching this." On his own, Petitioner went to Walgreen's and bought a "little rubber doughnut," which he applied to the affected area. The blister was gone. In its place was a bleeding ulcer. T. 43.

Petitioner testified he continued performing his regular gym-related duties after May 21, 2012. He changed the bandages on his ulcer and made an effort to keep the wound clean. T. 43.

Based on the records in evidence, Petitioner next sought treatment for his left foot on July 31, 2012. Petitioner saw Dr. Brown on that date. The doctor noted that Petitioner had

had a "sore on the bottom of his left forefoot for at least 10 weeks" and had been wearing a pad so as to keep pressure off the wound. On examination, Dr. Brown noted a full-thickness ulcer over the head of the head of the left second metatarsal." On this occasion, he described the ulcer as 6 mm in diameter. He noted associated drainage. He obtained a culture and referred Petitioner to Dr. Salvino, a podiatrist. The culture showed heavy growth of pseudomonas. PX 5.

Petitioner testified he ended up seeing a different podiatrist, Dr. Rozanski, because the podiatrist to whom he was referred by Dr. Brown was not in his HMO. T. 46. He saw Dr. Rosanski at the referral of another doctor, who he saw only for a "couple of minutes." T. 46.

Records in PX 5 reflect that Petitioner saw Dr. Aftab, the infectious disease physician who was treating his right leg cellulitis, on August 3, 2012, at the referral of Dr. Salvino. [No records from Dr. Salvino are in evidence.] In her note of August 3, 2012, Dr. Aftab indicated that Petitioner was "well known" to her from prior hospitalizations for gram negative pneumonia and recurrent cellulitis. Dr. Aftab noted that Petitioner had most recently been hospitalized in March 2012 and had stayed on "IV Vancomycin for 4-6 weeks."

Dr. Aftab indicated that Petitioner "is with the police force/County jail" and "works out extensively." She noted that Petitioner was "not sure of his diabetic status" but had "some kind of neuropathy on the underside" of his left foot, where he had developed an ulcer about two months earlier. She described the treatment to date, noting that Dr. Brown had cultured the ulcer. She indicated that Petitioner denied stepping on any nail and denied "any previous history of MRSA infection."

On examination of Petitioner's right leg, Dr. Aftab noted "slight eczema" with "some residual erythema." On examination of the left leg, she noted "some erythema on the dorsal aspect of the left foot" and "an ulcer about 22 cm in diameter under the left second metatarsal bone" which appeared "quite deep on probing."

Dr. Aftab noted that Petitioner did not perceive the ulcer as painful. She indicated that the ulcer could "very well be a neuropathic ulceration." She prescribed a left foot MRI and blood work. She started Petitioner on oral Bactrim. She indicated that Petitioner's past history of recurrent cellulitis and bypass graft with vein harvesting done to the left leg "predisposed" Petitioner to "worsening infection of lower extremities."

No left foot MRI report is in evidence.

On August 6, 2012, Petitioner underwent left foot X-rays, which revealed a "surgical clip along the plantar surface of the foot at the level of the distal second and third metatarsals" and no radiographic evidence of acute osteomyelitis. The X-ray report describes Dr. Salvino as the ordering physician. PX 5.

On August 8, 2012, Petitioner saw Dr. Hasan at the referral of the La Grange Wound Center. The doctor's note sets forth the following history:

> "Mr. Gerard Elsner is a 64-year-old male who was sent to La Grange Wound Center for management of a left foot wound. He had been followed by a podiatrist outside the wound center and is now referred for ongoing treatment of this wound. He states that he developed the left foot wound approximately 2 to 3 months ago. He states that he was recently diagnosed with diabetes. He underwent a debridement by a podiatrist recently. He has been on antibiotic treatment. He has been followed by the infectious disease service (Dr. Aftab) for antibiotic treatment."

Dr. Hasan noted that Petitioner "works with the police force/county jail" and "is physically active."

On examination of Petitioner's left foot, Dr. Hasan noted a plantar ulcer with a surrounding callus. Given the "non-healing" nature of the ulcer, Dr. Hasan recommended follow-up with Dr. Rozanski. He started Petitioner on Aquacel AG dressing. PX 9.

Petitioner testified that, by the time of his initial visit to Dr. Rozanski, the pressure ulcer was much larger. T. 47.

The first treatment note in evidence authored by Dr. Rozanski is dated August 14, 2012, with the doctor indicating Petitioner was "returning" for treatment of a "Wagner Grade 3 ulceration on the bottom of the left foot." The doctor noted "minimal progress." He described the ulcer as 1 cm in diameter but with a depth of 0.3 cm, "tunneling" to the center, "to the capsule of the second MPJ," with no bone exposure. Dr. Rozanski debrided the wound, removing "fibrotic tissue in the base and border." He planned to discuss IV antibiotics with Petitioner's infectious disease physician. He applied Aquacel and gave Petitioner "a new surgical shoe." PX 6.

A culture of the tissue Dr. Rozanski removed on August 14, 2012 showed "moderate growth of Methicillin-Resistant Staphylococcus Aureus [MRSA]." PX 8.

Petitioner next saw Dr. Rozanski on August 21, 2012. The doctor noted no cellulitis but indicated the plantar ulcer was still warm. He described the ulcer as 0.8 centimeters in diameter and 0.3 centimeters deep. He indicated the ulcer "still tracts to bone." He debrided the ulcer with a #15 blade, re-dressed the wound and informed Petitioner he might need removal of the underlying bone. PX 6.

On August 27, 2012, Petitioner filed an Application for Adjustment of Claim alleging a left foot injury of May 15, 2012. Arb Exh 2.

On August 28, 2012, Dr. Rozanski operated on Petitioner's left foot at Adventist La Grange Memorial Hospital. The doctor's pre-operative diagnoses included "foreign body, left foot." In his operative report, the doctor indicated he dissected capsular tissue off the metatarsal head and then used a power saw to remove the second metatarsal head. He indicated it was necessary to remove the second metatarsal head because "the necrotic tissue within the ulcer did go deep to the capsular tissue." He went on to state:

> "Then we did remove the free margin of the second metatarsal and base of the proximal phalanx sent to pathology as well as micro for further microanalysis to rule out existing osteomyelitis. We irrigated with normal saline solution. Exploration for any more abnormal or necrotic tissue was performed and none was found, **so then we did do further exploration under fluoroscopy to find the part of the needle that was still in the foot** since it was in close proximity and this was removed under sterile technique with minimal dissection." [emphasis added]

The operative report lists the following procedures: "excision of osteomyelitis and surgical closure of ulcer, left foot, with removal of foreign body as well." PX 6.

A culture taken from bone in Petitioner's left foot on August 28, 2012 showed "light growth Methicillin-Resistant Staphylococcus Aureus [MRSA]."

Petitioner continued to see Dr. Rozanski postoperatively. He also continued to see Dr. Aftab, because he was receiving antibiotics intravenously via a PICC line. T. 50. He developed shingles after the surgery and had to undergo treatment for that disorder. T. 64. On September 4, 2012, Dr. Rozanski removed a surgical drain, left the sutures intact and prescribed "minimal ambulation with a Darco shoe." On September 5, 2012, Dr. Aftab issued a note releasing Petitioner to work in a "cleaner environment." PX 7. On September 18, 2012, Dr. Rozanski removed the surgical sutures and used a #15 blade to remove fibrotic tissue from the base and border of the ulcer. He instructed Petitioner to continue wearing an off-loading shoe. A week later, Dr. Rozanski debrided the ulcer again, removing nonviable tissue, and instructed Petitioner to follow up. On September 26, 2012, Dr. Aftab issued a note releasing Petitioner to work in a "clean office setting and away from jail." PX 7. On October 2, 2012, Dr. Rozanski noted that Petitioner was still wearing the off-loading shoe and denied any pain. The doctor sutured the wound closed and instructed Petitioner to "continue with off-loading shoe to minimize weight bearing." On October 9, 2012, Dr. Rozanski applied Steri-Strips and instructed Petitioner to continue wearing the off-loading shoe. PX 6. On October 16, 2012, Dr. Rozanski removed the sutures, debrided some tissue and instructed Petitioner to continue using the off-loading shoe and obtain a customized shoe insert to prevent recurrence of the ulcer. PX 5.

Petitioner testified that, when he learned of his MRSA diagnosis, he notified Horne per Respondent's protocol. According to Petitioner, Horne responded to this news by screaming and telling Petitioner to report to personnel and "list [him]self as injured on duty." T. 50-51. That same day, Petitioner reported to Steve Hensley, Respondent's "injured on duty person," and completed various forms other than the supervisor's report form. Petitioner testified that Horne refused to complete this particular form. T. 51. Petitioner testified he was "directed to leave the premises" once he completed the forms. T. 52. He left the premises and did not return to work until November 28, 2012. The walking program stopped the day he left the premises. T. 57-58. He testified he was off work from August 1, 2012 until November 28, 2012. T. 53-54.

Petitioner testified that his family physician, Dr. Brown, released him to return to work as of November 28, 2012, at which point his foot wound was "closed." It was his understanding that the MRSA infection could recur despite the wound closure. When he returned to work, Horne did not allow him to return to the warehouse. Rosemarie Nelson assigned him to work in the jail kitchen, alongside minimum wage workers. At some subsequent point, he was re-assigned to his original program coordinator position. He still held this position as of the hearing.

Petitioner testified that the sole of his left foot hurts. He restricts his walking due to left foot pain. He continues to work out on a regular basis, as he has done since high school, but avoids walking and running. He now swims and lifts weights. T. 59. He also uses a recumbent bicycle but avoids putting pressure on the bottom of his left foot. T. 61. He is able to walk but experiences throbbing pain when he walks more than a couple hundred yards. He wears a slightly oversized shoe on his left foot and places a customized pad in the shoe. T. 60, 62. When he takes a shower at some location other than home, he seals a plastic bag over his left foot so as to avoid spreading the MRSA infection. T. 61. He keeps a supply of broad-spectrum antibiotics in his car as a prophylactic measure in the event of a MRSA flare-up. Dr. Aftab prescribed these antibiotics. T. 64.

Petitioner identified PX 4 as a document that he, Horne and Nora Fitzpatrick generated for the purpose of making Respondent employees aware of the walking program and other wellness activities. PX 4 was given to Respondent's public relations department so that it could be published in the Cook County Sheriff's newsletter. T. 63.

Petitioner denied developing blisters on any other part of his body after he developed the blister on his left foot. T. 65-66.

Under cross-examination, Petitioner identified RX 1 as a waiver form that Respondent employees were required to sign in order to participate in a charity event known as the "Walk for Riley." This event was intended to generate interest in the walking program but it never took place. RX 1 was not intended to serve as a waiver for the walking program. T. 69.

Petitioner testified that the funds designated toward the walking program consisted of his and Nora Fitzpatrick's salaries. T. 69-70. His participation in the walking program was part of his job. It was not voluntary. T. 70. He and the program participants met at a gate that was on property owned by the Cook County Sheriff. They then ventured out onto a sidewalk that was owned by either the Sheriff or the City of Chicago. T. 71. The walking program grew out of a meeting at which various wellness programs were discussed. He "might have" come up with the idea of the program because the goal was to come up with a program that would not cost anything. T. 72-73. Respondent paid for the flyers. T. 73.

On redirect, Petitioner reiterated that the "Walk for Riley" was a charitable event that was intended to raise money for an officer whose daughter was undergoing treatment for cancer. It was separate from the walking program. It never took place. T. 74.

In addition to the exhibits previously discussed, Petitioner offered into evidence bills from Adventist Health, Dr. Rozanski, Dr. Aftab, LaGrange Hospital and Dr. Hasan. PX 5-9. Respondent did not object to any of these bills. T. 95-99.

Respondent called Patricia Horne. Horne testified she was promoted to her current position, director of support services for the Cook County Sheriff, in July of 2012. As of May 15, 2012, her job title was special assistant to the executive director of the Cook County Department of Corrections. T. 77-78.

Horne testified that the walking program was a strictly voluntary activity intended to improve the health and morale of Respondent employees. T. 80. The participants were required to sign a waiver. They were also supposed to participate in the walks during lunch or while otherwise off duty. The Department of Corrections has an "open campus," meaning that employees can leave the premises to take lunch. T. 79-80. The walks were to take place on public sidewalks that are adjacent to County property. T. 79.

The following exchange occurred:

> Q: "As [Petitioner's] supervisor, did you at any time have control or authority over [Petitioner], specifically with regard to the volunteer walking program?
>
> A: Well, that's a complicated question. It's complicated because [Petitioner] was asked to coordinate activities working with the community and working within the Sheriff's office. So he was asked to serve as a liaison to these various programs that we had going, the walking club being one."

T. 80.

Horne testified that she drafted RX 1, the waiver form, at Petitioner's request. She prepared RX 1 on her own time, using her home computer. T. 82. The form was intended to eliminate Respondent liability for walking-related injuries, such as injuries stemming from falls. To the extent that Petitioner participated in the walking program, the form applied to him. T. 82. Petitioner was a program coordinator and promoter, not an athletic trainer for the walking program. Petitioner was asked to "pull together interested persons who wanted to walk, which could have included him, and to involve them in the walking process" by advising them of the start times and meeting point. Petitioner's participation, like that of the other walkers, was strictly voluntary. T. 84. The Sheriff's office has no mandatory exercise program. T. 84. The walking program was just part of an overall wellness effort promoted by Respondent and other entities, such as Blue Cross/Blue Shield. T. 84-85.

Under cross-examination, Horne testified there were two agendas behind the "Walk for Riley": raising money for a specific officer's family and generating interest in the walking program. Respondent's overall wellness program was never intended to have a charitable purpose. T. 87. Horne acknowledged she has no signed copy of RX 1. She has seen a separate document, labeled "Waiver of Liability for the Walking Club Program," but she did not bring this document to the hearing. She has no signed copies of this document. T. 88. It was her understanding that the individuals who participated in the walking program were going to meet and walk wherever they wanted to walk. T. 89.

On redirect, Horne characterized the "Walk for Riley" as an "additional motivator" to get people to agree to participate in the walking program. T. 89. Petitioner was aware of RX 1 and saw RX 1 after she prepared it at his request. T. 90.

Arbitrator's Credibility Assessment

The Arbitrator finds credible Petitioner's testimony concerning the origins and purpose of the walking program. The Arbitrator also finds credible Petitioner's testimony that the role he played in the program, i.e., that of promoter and "rear guard," was mandated by his job.

The Arbitrator finds Petitioner less than forthright with respect to his pre-accident state of health. For example, Petitioner testified he first learned he was "borderline diabetic" after he returned to work in November of 2012. Dr. Hasan's note of August 8, 2012, reflects, however, that Petitioner told him he had recently been diagnosed with diabetes.

Based on the wording Dr. Rozanski used in his operative report, it appears that Petitioner stepped on a needle prior to the surgery and that the doctor knew a section of the needle remained lodged in the foot before the surgery. The Arbitrator finds it odd that Petitioner never addressed this.

Did Petitioner sustain an accident arising out of and in the course of his employment? Did Petitioner establish causal connection?

Petitioner claims he developed a blister on the bottom of his left foot on or about May 15, 2012, as a result of performing job-related duties in connection with Respondent's walking program. Petitioner viewed his participation in this program as wholly different from that of other Respondent employees in that it was his function, as a program coordinator, to generate enthusiasm and essentially "corral" those who elected to join him on the scheduled walks. It was clearly in Respondent's interest to have someone walk alongside the participants to ensure they maintained a certain pace, stayed on course, avoided injury and returned to the workplace. The photographs reflect that Petitioner and Nora Fitzpatrick wore uniforms bearing Respondent's logo while leading a walk in which one of Respondent's directors participated. Given the overall goal of fostering employee wellness, it was in Respondent's interest to have Petitioner appear at the meeting point at the beginning of each walk, especially since some of the walks started before it got light outside. Horne did not contradict Petitioner's testimony that she selected the start times and that all of the walks were scheduled during Petitioner's normal work hours. Petitioner, unlike the other participants, was clearly not expected to walk only when off duty.

Based on the foregoing, the Arbitrator finds that Petitioner's participation in the walking program was not voluntary. The Arbitrator further finds that Section 11 of the Act (commonly known as the "voluntary recreational program" exclusion) would not bar Petitioner from asserting a claim for an injury stemming from such participation. See, e.g., Elmhurst Park District v. IWCC, 395 Ill.App.3d 404, 408 (1st Dist. 2009), in which the Appellate Court upheld the Commission's award of benefits to a fitness supervisor who was injured while participating in a wallyball game during his work shift. The claimant testified he participated in the game at the request of a co-worker who told him the game could not otherwise proceed due to a lack of sufficient paying customers. No one told him he had to participate. Rather, he felt compelled to participate because one of his job duties was to promote his employer's programs. The Commission found that Section 11 did not apply because the claimant was injured while performing duties incidental to his employment. In affirming this result, the Court found that "recreation" was inherent in the claimant's job. The same logic applies in the instant case, particularly because Petitioner was a fitness trainer as well as a program coordinator.

It is Petitioner's failure to establish causation as to the MRSA infection, the need for surgery and his current left foot condition that prompts the Arbitrator to deny benefits. While causation can, in some cases, be established via the "chain of events," with no need for medical testimony, the "chain of events" in the instant case is not entirely clear. Petitioner did not testify that he developed a painful blister while engaging in one of the scheduled walks. While some of Petitioner's medical providers took note of his training duties, no physician specifically mentioned the walking program. Nor did any physician opine, even in a general way, that Petitioner's job duties caused or aggravated the blister. The first treating physician, Dr. Miran, indicated the blister developed in the context of "immune system compromise" due to Petitioner having been on intravenous antibiotics for his recurrent cellulitis. The second treater, Dr. Brown, described the lesion as "mild." After this initial course of care ended on May 31, 2012, with neither Dr. Miran nor Dr. Brown having diagnosed an infection, there was a two-month gap in treatment, during which time Petitioner, per his testimony, did not

participate in the walking program. On July 31, 2012, Dr. Brown referred Petitioner to Dr. Salvino, a podiatrist. On August 6, 2012, Petitioner underwent left foot X-rays per Dr. Salvino. These X-rays documented the presence of a surgical clip at the level of the distal second and third metatarsals. In early August 2012, Dr. Aftab, the infectious disease physician who treated the cellulitis, noted that Petitioner had recently undergone a debridement by a podiatrist. It appears to the Arbitrator that Dr. Salvino performed this debridement, based on the X-ray order and surgical clip, but Petitioner did not offer any records from Dr. Salvino into evidence. This omission is puzzling. Dr. Aftab opined that the blister could "very well be" neuropathic, based on the absence of painful response. Petitioner went on to see another podiatrist, Dr. Rozanski. Dr. Rozanski operated, at least in part, to remove a foreign object, specifically a part of a needle that was "still inside" Petitioner's foot. The operative report documents an insult to the foot that Petitioner did not acknowledge. Dr. Rozanski treated Petitioner over an extended period yet never mentioned Petitioner's occupation, let alone the walking program.

Based on the foregoing, the Arbitrator finds that Petitioner failed to establish causation as to his MRSA, the need for surgery and his current left foot condition of ill-being. Benefits are denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

James Taylor,

Petitioner,

vs.

NO: 11 WC 18537

14IWCC0067

Maschoff Transportation, LLC,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of causal connection, medical expenses, prospective medical expenses and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed March 28, 2013 is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

14IWCC0067

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 03 2014

Mario Basurto

David L. Gore

Daniel R. Donohoo

MB/mam
O:1/23/14
43

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

TAYLOR, JAMES
Employee/Petitioner

Case# **11WC018537**

14IWCC0067

MASCHHOFF TRANSPORTATION LLC
Employer/Respondent

On 3/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0299 KEEFE & DEPAULI PC
JAMES K KEEFE JR
#2 EXECUTIVE DR
FAIRVIEW HTS, IL 62208

0180 EVANS & DIXON LLC
KIM M PARKS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

14IWCC0067

TAYLOR, JAMES
Employee/Petitioner

Case# 11WC018537

MASCHHOFF TRANSPORTATION LLC
Employer/Respondent

On 3/28/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.10% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

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KIM M PARKS
211 N BROADWAY SUITE 2500
ST LOUIS, MO 63102

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

James Taylor
Employee/Petitioner

v.

Maschhoff Transportation, LLC
Employer/Respondent

Case # 11 WC 18537

Consolidated cases: _____

14IWCC0067

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on January 28, 2013. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☐ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☐ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, April 14, 2011, Respondent was operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship did exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $43,466.21; the average weekly wage was $835.89.

On the date of accident, Petitioner was 50 years of age, married with 0 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $0.00 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $0.00. The parties stipulated and agreed that all TTD benefits have been paid in full.

Respondent is entitled to a credit of amounts paid under Section 8(j) of the Act.

ORDER

Respondent shall pay for reasonable and necessary medical services as identified in Petitioner's Exhibit 15, as provided in Sections 8(a) and 8.2 of the Act subject to the fee schedule. Respondent shall be given a credit for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

Respondent shall authorize and make payment for prospective medical treatment as recommended by Dr. Gornet including, but not limited to, the low back surgery.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator
ICArbDec19(b)

March 25, 2013
Date

MAR 28 2013

Findings of Fact

Petitioner filed an Application for Adjustment of Claim which alleged he sustained an accidental injury arising out of and in the course of his employment for Respondent on April 14, 2011. According to the Application, Petitioner sustained injuries to the cervical, thoracic, lumbar spines and left upper extremity as a result of a truck accident. Respondent stipulated that Petitioner sustained a work-related injury and paid both temporary total disability benefits and medical; however, Respondent disputed liability in regard to the low back on the basis of causal relationship. This case was tried as a 19(b) proceeding and Petitioner sought an order for payment of medical bills as well as prospective medical treatment in regard to the low back.

Petitioner worked for Respondent as a delivery driver and drove a semi truck/trailer. Petitioner with would also lift and move 50 pound bags of feed every week or two. When Petitioner was driving the truck, he would customarily drive it on back roads and he described the ride as being very rough as compared to what it would be on the interstate. Prior to April 14, 2011, Petitioner was able to perform all of his job duties without any particular difficulty.

On April 14, 2011, Petitioner was involved in a single vehicle accident. He was not certain as to exactly how it occurred because he lost consciousness and could only recall that the truck was laying on its left side. Emergency personnel that responded to the accident had to remove Petitioner from the truck cab.

Prior to the accident of April 14, 2011, Petitioner received chiropractic treatment for several years for low back symptoms from Dr. Josh Berger. Dr. Berger's records revealed that Petitioner was seen for a low back problem in April, 2008, and also had several visits in June and July, 2010. These records stated that Petitioner's back symptoms improved over time and Dr. Berger did not ever impose any work/activity restrictions upon Petitioner.

On January 26, 2011, Petitioner was seen by Dr. Thomas Forget for low back pain. Dr. Forget reviewed an MRI that had been obtained two weeks prior and opined that it revealed an L4–L5 spondylolisthesis. This MRI was performed on January 10, 2011, at the request of Dr. Richard Lehman and, in addition to the L4–L5 spondylolisthesis, it also noted the presence of an annular tear at L5–S1. No medical reports/records from Dr. Lehman were tendered into evidence at the time of the trial of this case. Dr. Forget examined Petitioner and noted that the neurologic exam was normal, that Petitioner was overweight, 6 feet tall and 260 pounds. Dr. Forget opined that Petitioner would benefit from a decompression and fusion, but that it was reasonable to wait and he prescribed some physical therapy and a weight loss program. Dr. Forget did not impose any work/activity restrictions.

Petitioner received physical therapy at St. Mary's Good Samaritan Hospital between January 31, 2011, and February 11, 2011. At the time of his initial assessment of January 31, 2011, Petitioner reported the pain as being 8/10. At the time of the last visit of February 11, 2011, he reported the pain as being 2/10. Petitioner also received chiropractic care at Thayer Medical Facility between February 21, 2011, and April 13, 2011. When Petitioner began treatment there on February 21, 2011, he reported that the pain was constant and rated as 6/10. Petitioner was seen at that facility several times and both the duration and seriousness of the pain gradually decreased. On April 13,

2011, (the day before Petitioner's accident) the duration of the pain was described as intermittent and the severity was rated as 5/10. In spite of Petitioner's low back symptoms, he continued to work in a full and unrestricted capacity and also engaged in various recreational activities such as golf and playing basketball with his grandkids.

Following the accident of April 14, 2011, Petitioner was taken to Fayette County Hospital where it was noted that Petitioner had multiple scalp and forehead lacerations and bruising to the left arm/shoulder. Petitioner reported that he had pain "all over." Multiple x-rays and CT scans were obtained which included a CT scan of the cervical spine which did not reveal any acute bony abnormality. At trial, Petitioner testified that he could not recall much about his time at Fayette County Hospital. Following his discharge, Petitioner was seen by Dr. Michael Darmadi, his family physician, who initially referred him to a cardiologist because he suspected Petitioner had an aneurysm.

Petitioner was seen by Dr. Berger on April 19, 2011, and Petitioner informed Dr. Berger that he had pains the back of the neck, left shoulder, low back as well as a headache. Dr. Berger opined that Petitioner had a fractured cervical vertebrae and referred him to Dr. James Coyle, an orthopedic surgeon.

Dr. Coyle initially saw Petitioner on April 28, 2011. In the medical history form completed by Petitioner, he stated he had various complaints secondary to the accident of April 14, 2011, including neck and back pain. Dr. Coyle's medical report of that date was focused on the cervical spine and that Petitioner had complaints of neck pain, left shoulder pain and numbness of the left thumb. Dr. Coyle had a CT scan of the cervical spine performed which confirmed the presence of a left sided facet fracture at C6–C7. Dr. Coyle prescribed a cervical collar and authorized Petitioner to be off work. In regard to the low back, Dr. Coyle's report did state that Petitioner had a history of low back pain for which he was treated but that it had been improving and that he presently had recurrent back pain since the time of the accident. Dr. Coyle ordered an MRI which was also performed on that date which revealed disc protrusions at C5–C6 and C6–C7. Dr. Coyle saw Petitioner on May 16, 2011, and recommended that more time was required to let the fracture heal. He continued to authorize Petitioner to remain off work.

Dr. Coyle saw Petitioner on June 14, 2011, and recommended surgery consisting of a discectomy and fusion at C5–C6 and C6–C7 with metal plating. At trial, Petitioner testified that it was his understanding that Dr. Coyle was going to initially fix the neck and wait on the low back.

At the direction of Respondent, Petitioner was examined by Dr. Marvin Mishkin, an orthopedic surgeon, on July 19, 2011. Dr. Mishkin reviewed various medical reports/records provided to him and examined the Petitioner. Dr. Mishkin opined that Petitioner's low back condition of spondylolisthesis at L4–L5 and degenerative disc disease were chronic and predated the accident of April 14, 2011, and were not causally related to it. In regard to the cervical spine, Dr. Mishkin opined that neck surgery was not indicated. At that time, Respondent had not approved the neck surgery recommended by Dr. Coyle.

Petitioner returned to Dr. Berger who referred him to Dr. Matthew Gornet, an orthopedic surgeon. Dr. Gornet initially saw Petitioner on August 25, 2011. In the information sheet

completed by the Petitioner in connection with that visit, Petitioner indicated that he had pain referable to the neck and left shoulder/trapezius area, numbness to the left thumb, and low back pain on both sides, more on the left than on the right. Petitioner indicated his current level of pain as being 9/10. Petitioner informed Dr. Gornet that he had low back symptoms, chiropractic care and an MRI performed before the work accident; however, he also advised Dr. Gornet that he had been able to work full duty with just some occasional symptoms. Dr. Gornet examined Petitioner and obtained x-rays of both the cervical and lumbar spine. The cervical spine x-rays confirmed the facet fracture at C6–C7 and the low back films revealed an isthmic type spondylolisthesis at L4–L5. Dr. Gornet also reviewed the MRI that had been obtained on April 28, 2011, and opined that it did show disc pathology at C5–C6 and C6–C7. Dr. Gornet opined that the cervical condition was related to the work injury and that surgery was indicated including a fusion at C6–C7 and possibly also at C4–C5 and C5–C6. In regard to the low back, Dr. Gornet noted that Petitioner had a problem that predated the accident but that it was clear from the history that Petitioner had aggravated this condition. Dr. Gornet requested the MRI that had been performed in January, 2011, and prior medical records and recommended that a new MRI be performed on the low back.

At Dr. Gornet's direction, a lumbar MRI was performed on September 15, 2011, which revealed an anterolisthesis of L4–L5 and disc bulges at L4–L5 and L5–S1. Dr. Gornet reviewed both this scan and the MRI that was performed on January 10, 2011, and opined that there was not an appreciable difference between the two. Dr. Gornet noted that while he could not measure the cellular inflammatory response, that the accident caused an aggravation of the pre-existing condition. At that time, Dr. Gornet recommended that Petitioner have some injections at L4–L5 and L5–S1.

On September 26, and October 10, 2011, Petitioner was seen by Dr. Kaylea Boutwell who administered epidural steroid injections at the L4–L5 and L5–S1 levels. Petitioner did not experience any significant relief of his symptoms as a result of those injections.

At Respondent's direction, Petitioner was examined by Dr. Robert Bernardi, on August 31, 2011. Dr. Bernardi obtained a history and examined Petitioner and reviewed various medical report/records that were provided to him. In regard to the cervical spine symptoms, Dr. Bernardi opined that they were causally related to the accident of April 14, 2011; however, he recommended that Petitioner undergo nerve conduction studies to determine whether or not there was any cervical radiculopathy and then, depending on those results, determine if surgery was indicated. In regard to the low back, Dr. Bernardi opined that Petitioner's low back condition was not related to the accident of April 14, 2011, basing this on the fact that the L4–L5 spondylolisthesis pre-existed the accident and that a single traumatic event could not cause it to become chronically symptomatic. Petitioner had nerve conduction studies performed by Dr. Dan Phillips on September 19, 2011, which revealed mild chronic left radiculopathy of C5, C6 and C7. Dr. Bernardi reviewed Dr. Phillips' report and opined that these were chronic and not related to the accident of April 14, 2011.

Dr. Gornet saw Petitioner on November 14, 2011 and, at that time, he reviewed the reports of both Dr. Mishkin and Dr. Bernardi. In regard to Dr. Mishkin, Dr. Gornet noted that Dr. Mishkin does not perform spinal surgeries and that his opinion in regard to causation is limited. In regard

to Dr. Bernardi's opinion regarding causality, Dr. Gornet acknowledged that Petitioner did have pre-existing low back symptoms and treatment; however, he noted that the medical records that pre-dated the accident did indicate that Petitioner's low back condition was improving. Dr. Gornet reaffirmed his opinion that the accident of April 14, 2011, was an aggravation of a pre-existing condition. While waiting for Respondent to authorize neck surgery, Petitioner was seen by Dr. Gornet on January 16, April 5, and July 9, 2012, and his symptoms and findings remained the same in respect to both the neck and low back.

Respondent approved the cervical disc surgery and, on November 6, 2012, Dr. Gornet performed surgery consisting of a microdiscectomy and fusion at C4–C5 and C6–C7 and a disc replacement at C5–C6. At trial, Petitioner testified that his neck condition was improved although he still had some pain and that his arm symptoms have resolved.

Dr. Gornet was deposed on June 28, 2012 (which was prior to the neck surgery). In regard to the low back, Dr. Gornet reaffirmed his opinion that the accident of April 14, 2011, aggravated the condition and again noted that while Petitioner had a pre-existing low back problem, that it was improving with conservative care. Although Dr. Gornet noted that while there were no significant differences between the MRIs of January 10, 2011, and September 15, 2011, the accident caused a cellular response and chemical changes within the disc that explain the increases in Petitioner's symptoms, especially given the force required to cause a neck fracture. Dr. Gornet also noted that the pre-accident medical records supported that Petitioner's symptoms had improved before the accident but that, after the accident, the symptoms were no longer waxing and waning but were unrelenting. Dr. Gornet recommended low back surgery consisting of a spinal fusion at L4–L5 and L5–S1. At trial, Petitioner testified that he wants to have the low back surgery performed as recommended by Dr. Gornet.

Dr. Bernardi was deposed on August 17, 2012, and his deposition testimony was received into evidence at trial. Dr. Bernardi's testimony was consistent with his medical records/reports and he reaffirmed his opinion that Petitioner's low back pain was not causally related to the accident of April 14, 2011, because Petitioner had a symptomatic L4–L5 spondylolisthesis prior to the accident. On cross-examination, Dr. Bernardi was asked whether the accident could have aggravated the condition and he responded that this was a completely subjective perception and something that he could not know with any certainty. Dr. Bernardi did agree that back surgery was indicated for Petitioner's low back condition.

Petitioner has been totally disabled since the time of the accident and Respondent has paid Petitioner temporary total disability benefits for this period of time.

Conclusions of Law

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being in regard to the lumbar spine is causally related to the accident of April 14, 2011, because the accident aggravated and made more symptomatic a pre-existing condition.

In support of this conclusion the Arbitrator notes the following:

Prior to the accident of April 14, 2011, Petitioner was diagnosed with an L4-L5 spondylolisthesis which was symptomatic and for which Petitioner received both medical and chiropractic care. While Dr. Forget opined that the condition could require surgery, both Petitioner and Dr. Forget agreed on a more conservative approach including physical therapy and weight loss. It is significant that Dr. Forget never imposed any work/activity restrictions on Petitioner and Petitioner was able to work full unrestricted duty driving a truck and lifting up to 50 pounds.

Petitioner's testimony and the medical records that pre-dated the accident of April 14, 2011, both indicate that Petitioner's low back symptoms were gradually improving prior to the accident of April 14, 2011.

The Arbitrator finds Dr. Gornet's opinion as to causality to be more credible than the opinions of Dr. Mishkin and Dr. Bernardi. Dr. Gornet's opinion is consistent with Petitioner's testimony in the pre-accident medical records regarding Petitioner's low back condition. Dr. Bernardi agreed that he could not state with any certainty whether or not Petitioner could have aggravated his low back condition as a result of the accident of April 14, 2011.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that all of the medical treatment provided to Petitioner was reasonable and necessary and causally related to the accident of April 14, 2011. Respondent is thereby liable for payment of the medical bills associated therewith.

Respondent shall pay reasonable and necessary medical bills as identified in Petitioner's Exhibit 15, as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit for amounts paid for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit, as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes Petitioner is entitled to prospective medical care including, but not limited to, the low back surgery recommended by Dr. Gornet.

In support of this conclusion the Arbitrator notes the following:

Dr. Gornet has recommended that Petitioner undergo low back surgery and Dr. Bernardi agrees that surgery is appropriate.

William R. Gallagher, Arbitrator

STATE OF ILLINOIS)
) SS.
COUNTY OF ADAMS)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Jeffrey N. Garwood,
Petitioner,
vs.

NO: 12WC 4194

14IWCC0068

Lake Land College,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of average weekly rate, permanent partial disability and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 3, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 0 3 2014

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CJD/jrc
049

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF ARBITRATOR DECISION

GARWOOD, JEFFREY N
Employee/Petitioner

Case# **12WC004194**

LAKE LAND COLLEGE
Employer/Respondent

14IWCC0068

On 1/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0834 KANOSKI & ASSOCIATES
CHARLES N EDMISTON
129 S CONGRESS
RUSHVILLE, IL 62681

RUSIN MACIOROWDKI & FRIEDMAN LTD
TERRY SCHROEDER
2506 GALEN DR SUITE 104
CHAMPAIGN, IL 61821-7047

STATE OF ILLINOIS)SS.
COUNTY OF ADAMS)

14IWCC0068

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION

Jeffrey N. Garwood
Employee/Petitioner

v.

Lake Land College
Employer/Respondent

Case # 12 WC 4194

Consolidated cases: N/A

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Nancy Lindsay**, Arbitrator of the Commission, in the city of **Quincy**, on **November 8, 2012**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☐ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☒ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☐ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
L. ☒ What is the nature and extent of the injury?
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other

FINDINGS

On **September 12, 2011**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is*** causally related to the accident.

In the year preceding the injury, Petitioner earned **$40,520.00**; the average weekly wage was **$779.23**.

On the date of accident, Petitioner was **54** years of age, ***married*** with **no** dependent children.

Petitioner ***has*** received all reasonable and necessary medical services.

Respondent ***has not*** paid all appropriate charges for all reasonable and necessary medical services.

Respondent shall be given a credit of **$1,595.33** for TTD, $ **0** for TPD, $ **0** for maintenance, and $ **0** for other benefits, for a total credit of $ **1,595.33**.

Respondent is entitled to a credit of $ **0** under Section 8(j) of the Act.

ORDER

Respondent shall pay Petitioner temporary total disability benefits of **$519.44/week** for **4 4/7** weeks, commencing **12/2/11** through **1/3/12**, as provided in Section 8(b) of the Act. Respondent shall be given a credit of **$1,595.33** for temporary total disability benefits that have been paid.

As stipulated, Respondent shall pay reasonable and necessary medical services of **$113.00**, as provided in Section 8(a) of the Act.

Respondent shall pay Petitioner permanent partial disability benefits of **$467.54/week** for **43** weeks, because the injuries sustained caused the **20%** loss of the **left leg**, as provided in Section 8(e) of the Act.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Nancy Lindsay
Signature of Arbitrator

12/28/12
Date

JAN 3 - 2013

The Arbitrator finds:

Petitioner testified he began working for Respondent on January 30, 2006 as a vocational computer instructor. Petitioner testified that in June of 2010 all business and computer vocational classes were done away with; however, he was later brought back as an adjunct instructor (part-time instructor). Petitioner testified that as an adjunct instructor, he was paid per class. Petitioner testified he came back and taught computer-related classes, including introductions to computers and various other application, software, and keyboarding classes. Petitioner testified he was paid a different amount for each class based upon the number of credit hours for each class. Petitioner confirmed that for the wage periods shown on the wage statement beginning during November of 2010 and ending in June of 2011 he was working as an adjunct instructor (RX 3).

Petitioner further testified that beginning July 1, 2011 he became the vocational correctional occupational instructor at Western Illinois Correctional Center in Mt. Sterling, Illinois. This position was a full-time salaried position. When asked how he came to change his employment status he explained that when he was let go in June of 2010 he was on a "two-year recall," and when a previous instructor retired he was offered the job. Petitioner testified the difference in the job was that full-time employment included additional employment benefits such as healthcare and life insurance.

At arbitration, the parties stipulated that when Petitioner went to work as a full-time employee on July 1, 2011, he entered into an employment contract with Respondent and his annual salary payable under that contract is $40,519.48.

Petitioner testified that on 9/12/11 he was still working for Respondent as a full-time vocational instructor at the Western Illinois Correctional Center in Mt. Sterling, Illinois.

Accident and causation were undisputed. Petitioner testified that on September 12, 2011, he was walking to his vehicle after work when he tripped and fell in an area where concrete was in the process of being ground down to allow wheel chair access, landing first on his left knee and then onto his left hand, elbow and side. Petitioner testified that stood up on his own but noticed pain in his left knee, left elbow, ribs and left wrist. He continued home and that evening continued to experience increasing pain and swelling in his left knee. Petitioner testified that he reported the fall the next morning to his immediate supervisor, Tom Theiss, and to Tom Kerkhoff, Respondent's Executive Dean of Corrections.

Records show that Petitioner first sought medical care from his family doctor, Dr. Jennifer Schroeder, on September 13, 2011. Petitioner reported a consistent history of the accident and complained of pain in his left knee, as well as his left rib area and left elbow. (Pet. Ex. 3, p. 94) Petitioner was walking stiff legged and reported a sensation as if his leg would give way. He acknowledged having undergone a left knee arthroscopy previously but denied any further knee problems until his recent work accident. (Pet.

Ex. 3, p. 94)

On physical examination, Dr. Schroeder noted tenderness and abnormal range of motion of the left elbow and that Petitioner was walking stiff and not bearing weight on his left knee. She noted that x-rays of the left elbow and knee did not demonstrate any bony injury. (Pet. Ex. 3, p. 95, 99-100) Dr. Schroeder recommended the use of ice and heat, NSAIDS, range of motion exercise and a left knee immobilizer for comfort. (Pet. Ex. 3, p. 96) Petitioner returned to Dr. Schroeder on September 23, 2011, reporting continued concern regarding left knee pain and requesting a referral to Dr. Ronald Wheeler, an orthopedic surgeon. Petitioner also reported pain in his left chest wall while deep breathing or rubbing the chest wall and requested that it be x-rayed. (Pet. Ex. 3, p. 91) A rib and chest x-ray was taken but did not show any fracture. (Pet. Ex. 3, pp. 93, 98) Noting that Petitioner's left knee had not improved, Dr. Schroeder referred Petitioner to Dr. Ronald Wheeler. Petitioner's left elbow was not causing any problems.(Pet. Ex. 3, p. 93)

Petitioner initially saw Dr. Wheeler on October 3, 2011, reporting an onset of left knee pain after a fall at work about three weeks earlier with persistent discomfort thereafter. (Pet. Ex. 1, p. 16) On examination, Dr. Wheeler noted some swelling in the knee and vague tenderness and diagnosed pes anserine bursitis. He recommended adjustment of activities and consideration of therapy. (Pet. Ex. 1, p. 16)

Petitioner returned to see Dr. Wheeler a week later on October 10, 2011, reporting continued discomfort. (Pet. Ex. 1, p. 15)

Petitioner underwent an MRI of his left knee on October 10, 2011 at Blessing Hospital. The report of Dr. Stanton indicated mild chondromalacia of the patellofemoral compartment and mild thinning of the articular cartilage of the medial and lateral tibiofemoral compartments. Petitioner's medial meniscus appeared normal without tear. There was an oblique tear involving the posterior horn of the lateral meniscus with truncation of the inner third zone body of the lateral meniscus. It was Dr. Stanton's impression there was mild chondromalacia and arthritis involving the patellofemoral compartment and a complete tear of the posterior horn of the lateral meniscus. (RX 2,

Dr. Wheeler recommended therapy but noted that surgery might be required if Petitioner did not improve. (Pet. Ex. 1, p. 15) Records from Quincy Medical Group show that Petitioner began therapy on October 13, 2011, reporting a consistent history of accident and worsening pain in his left knee since that time. (Pet. Ex. 3, p. 86-87) Petitioner attended 8 sessions of therapy through October 27, 2011. (Pet. Ex. 3, pp. 76 – 85) At the final session, Petitioner continued to report pain of a level of 6-8/10 in all positions most of the time. Petitioner did not feel that he had experienced any improvement with therapy and showed no objective improvement in range of motion or strength. Petitioner reported difficulty with functional tasks as well as work tasks requiring prolonged standing and walking which would increase his left knee pain. The therapist opined that further functional improvement would be limited by worsening symptoms. (Pet. Ex. 3, p. 76)

Petitioner returned to Dr. Wheeler on October 31, 2011, reporting increasing pain in his left knee that was aggravated by activity. (Pet. Ex. 1, p. 14) On examination, Dr. Wheeler noted diffuse tenderness, positive McMurray testing and tenderness both medially and laterally. Dr. Wheeler therefore recommended surgery on the knee after clearance by Dr. Schroeder. (Pet. Ex. 1, p. 14)

Petitioner proceeded with arthroscopic surgery on December 2, 2011, at Blessing Hospital. (Pet. Ex. 1, pp. 11-13, Pet. Ex. 2, pp. 17-18) In the course of arthroscopic surgery, Dr. Wheeler confirmed his pre-operative diagnosis of medial and lateral meniscus tears and debrided those tears. He also found Class II chondromalacia of the medial femoral condyle and the medial tibial plateau and chondroplasty was performed. Some chondromalacia of the lateral tibial plateau was also noted and chondroplasty was performed. Synovectomy was also performed and a synovial plica was removed. (Pet. Ex. 2, pp. 17-18) Petitioner followed up with Dr. Wheeler on December 8, 2011, when sutures were removed and therapy was ordered. (Pet. Ex. 1, p. 10)

Records show that Petitioner began post-operative therapy on December 12, 2011, and attended 30 sessions through February 6, 2012. (Pet. Ex. 3, pp. 28-59) Petitioner continued to follow up with Dr. Wheeler on December 29, 2011, January 26, 2012 and February 6, 2012. (Pet. Ex. 1, pp. 7-9) At these visits, Dr. Wheeler noted some ongoing soreness, though improved, and some improvement in strength, though he noted a continued imbalance in the quads and hamstrings. (Pet. Ex. 1, pp. 8-9) In her last physical therapy note, Petitioner's therapist noted that the focus of treatment had been on normalizing Petitioner's left knee range of motion and progressive strengthening as tolerated. Petitioner's response had been good with only minimal complaints of pain with prolonged weightbearing activities. All goals were achieved and Petitioner was discharged to an established home exercise program per Dr. Wheeler's discretion. (Pet. Ex. 3, p. 28)

Petitioner returned for a final appointment on May 7, 2012, reporting that he was doing fairly well but was continuing to experience some soreness. (Pet. Ex. 1, p. 5) Dr. Wheeler noted "improved" range of motion and good strength in Petitioner's knee. There was no tenderness, effusion, or swelling noted. There was balance between Petitioner's quads and hamstrings. Dr. Wheeler released Petitioner from care finding him to be at maximum medical improvement. Dr. Wheeler did not anticipate any permanent disability. (Pet. Ex. 1, p. 5)

Petitioner was examined by Dr. Joseph T. Monaco at Respondent's request on August 3, 2012, in Bloomington, Illinois (Resp. Ex. 1) Dr. Monaco provided an impairment rating of Petitioner's injury under the 6th Addition of the AMA Guides. Dr. Monaco reviewed Petitioner's medical records, met with Petitioner and took a history and summary of his complaints. He also performed a physical examination. At the time of the exam, Petitioner reported he liked to walk for exercise and was doing so for about thirty minutes two to three times per week. Petitioner also reported taking two Aleve tablets about three times per week for arthritic knee pain. Petitioner provided the doctor with a typed report regarding his ongoing complaints. Petitioner reported pain from six inches above the knee to six inches below the knee. He described this pain as mild to moderate most of the time but getting as bad as 5/10 on occasion. Petitioner also reported that his knee would stiffen up if he sat for more than twenty minutes at a time with his knee bent, that he felt weak when arising from a sitting position or turning to his left, and occasionally he loses his balance while walking down a hallway. Petitioner also reported increasing pain

and stiffness when driving a car, walking in a store or on any concrete surface for a long period of time. Petitioner noted that his knee would also hurt when lying in bed at the end of the day. Petitioner explained that he could help lessen the pain and stiffness by elevating his leg during the day.

In his report Dr. Monaco noted that Petitioner walked with a slight left antalgic gait. Petitioner had seven degrees of valgus in both knees when supine and standing. Petitioner had full extension with 135 degrees of flexion, equal to the right knee. There was good straight leg raise and no extensor lag. There was trace patellofemoral crepitus bilaterally. There was no patellofemoral pain with ballottement of the left knee. Petitioner's left knee was stable to varus and valgus stress and anterior and posterior drawer sign. Lachman's test and Pivot-shift test were negative. McMurray testing revealed mild discomfort. He noted that Petitioner's left knee was slightly larger than the right (44 cm vs 43.2 or 43.5 cm) and that there was some discomfort with McMurray's testing, though there was no pop or click. Deep tendon reflexes were 2+ and equal bilaterally at both the knees and ankles. Motor function was graded 5/5 in all muscles tested in the lower extremities. Homan's sign was negative. Petitioner exhibited good dorsalis pedis pulses. Dr. Monaco also reviewed Petitioner's diagnostic studies. He concurred with Dr. Wheeler's earlier diagnoses and believed petitioner had reached maximum medical improvement as a result of his work accident. Dr. Monaco only believed the tears were due to the accident; Petitioner's chondromalacia pre-dated the accident and was not related. Based upon the AMA Guides (Sixth Edition), Petitioner's impairment was rated at 3% whole person impairment or 8% loss of the lower extremity. (RX 1 and RX 2, exhibit 2)

Dr. Monaco's deposition was taken on November 1, 2012. Dr. Monaco, a board certified orthopedic surgeon, testified consistent with his report.

Dr. Monaco testified that he diagnosed Petitioner with tears of the medial and lateral meniscus of the left knee and chondromalacia of the patellofemoral joint of the left knee. He further opined that the meniscus tears were causally related to Petitioner's fall but not the chondromalacia. (Resp. Ex. 2, pp. 20-21) In reaching an impairment rating, Dr. Monaco testified that he did not consider the chondromalacia to be related to the work injury but he did consider the medial and lateral meniscus tears to be related. (Resp. Ex. 2, p. 29). Accordingly, he looked to Table 16-3 of the AMA Guides, and used the Diagnostic Criteria (Key Factor) to be "Meniscal Injury" and assigned the injury to Class 1 as a "Partial (medial and lateral)". (Resp. Ex. 2, pp. 29-30) He noted that the Class assignment is based upon a tear of the meniscus and that the rating is not affected by whether it was treated surgically or not. (Resp. Ex. 2, p. 30) He testified that under the Guides he would initially assign the injury to Class C within that class, providing a default impairment of 10% of the lower extremity subject to grade modifiers and adjustment grids. (Resp. Ex. 2, p. 31) Dr. Monaco testified that generally there are three categories of modifiers – functional history, physical examination and diagnostic studies. (Resp. Ex. 2, p. 24) In considering Functional History Adjustment, Dr. Monaco looked to Table 16-6 of the Guides which shows five levels of Grade Modifier ranging from "no problem" to "very severe problem". Under the class definition of "Gait Derangement", Dr. Monaco assigned a Grade Modifier of 1 (Mild Problem) as Petitioner did have a limp. This Adjustment table also refers to the "AAOS Lower Limb Instrument", though Dr. Monaco stated that he used the "PDQ" (pain disability questionnaire) assessment tool instead as he felt it was a more reliable tool. He acknowledged that the Guides recommend use of the AAOS Lower Limb Instrument (outcome measure). (Resp. Ex. 2, p. 32, 27, 46-48)

On cross-examination, Dr. Monaco admitted that Petitioner's score on the PDQ would be classified as a "moderate" rather than "mild" (as indicated in his report) and a Grade Modifier "2" rather than the Grade Modifier "1" that he had assigned, but testified that he would reject that higher Modifier because it seemed inconsistent with the Gait Derangement modifier and because the Guides provide that if the Functional History modifier deviates two or more grades from any other modifier it should be considered unreliable and should not be used. (Resp. Ex. 2, pp. 49-52) Dr. Monaco next considered the Physical Examination Adjustment found in Table 16-7 of the Guides and concluded that all of Petitioner's physical findings were under Grade Modifier 0. Finally, he looked to the Clinical Studies Adjustment grade modifiers in Table 16-8 of the Guides, but did not use this table as he felt that the clinical studies were used to define the diagnosis and, as he interpreted the Guides, should not then be used to make a further adjustment. (Resp. Ex. 2, p. 35) However, he testified that if he did consider the fact that the clinical studies confirmed the diagnosis, the result would not change the impairment rating. (Resp. Ex. 2, p. 35-37) Dr. Monaco then testified that under the Guides, he would then subtract each grade modifier from the class of diagnosis resulting here in a net adjustment of minus 1. (Resp. Ex. 2, pp. 38-39) He testified that this would reduce the impairment rating to Class B within Class 1 in Table 16-3 of the Guides, resulting in a final impairment rating of 8% of the lower extremity. (Resp. Ex. 2, p. 39)

On further cross-examination, Dr. Monaco acknowledged that "impairment" is not synonymous with "disability" and that other factors than "impairment" must be considered to determine "disability". (Resp. Ex. 2, pp. 42-43) Dr. Monaco also acknowledged that the Guides note a difference between "legal" causation (judged at more than 50% probable) and "medical" causation (judged at 95% probable) and testified that in concluding that the chondromalacia was not related to the injury he was applying "medical" causation. (Resp. Ex. 2, p. 52) However, the testified that even if the chondromalacia were considered related, that fact would not affect the impairment rating because the Guides allow consideration of only one diagnosis in each part of the body. (Resp. Ex. 2, p. 53) Therefore, if an injury results in more than one diagnosis in one part of the body, the impairments related to each diagnosis are not added together and only the more serious diagnosis is taken into account. (Resp. Ex. 2, p. 53)

Dr. Monaco testified that he devotes 20 percent of his practice to performing IME examinations. (Resp. Ex. 2, p. 6) Dr. Monaco testified that he had performed 10 evaluations for impairment ratings since May or June 2012. (Resp. Ex. 2, p. 62-63) He testified that he performed his examination in Bloomington, Illinois (though his office is in Tinley Park, Illinois) through a vendor who "market[s] themselves to insurance companies for these kind[s] of services." (Resp. Ex. 2, p. 63) He testified that he travels to Bloomington about once a month for this vendor and sees four to six people over the course of a day. (Resp. Ex. 2, p. 63) Dr. Monaco further testified that all of the impairment ratings that he has done have been at the request of insurance companies or defense attorneys. (Resp. Ex. 2, p. 64-65) He testified that he also performs IMEs independent of impairment ratings and performs 10 to 12 per month and 95 percent of these are for insurance companies and defense firms. (Resp. Ex. 2, p. 65) Dr. Monaco testified that he does not do an impairment rating without doing a full medical examination, and that he charges $1,250.00 for the medical examination and an additional $250 for the impairment rating. He testified that he charges $650 per hour, with a minimum of two hours, for depositions and $325 for preparation time if there is a lot of preparation time. (Resp. Ex. 2)

At arbitration Petitioner testified that he is 54 years of age and remains employed as an instructor of Construction Occupations at the prison. Petitioner denied any problems with his left knee before his undisputed accident on September 12, 2011. Petitioner acknowledged that he is able to perform his present job duties but that he sits down whenever he can. He prefers to sit, rather than to stand, when teaching. Petitioner also testified that he occasionally puts his leg up on a desk and stretches it but doesn't do so when the students are around. Petitioner takes Aleve when the pain is "real bad." Petitioner also testified that he continues to experience the problems with his knee that he described in detail to Dr. Monaco. Petitioner further testified that he and his wife used to walk and that he is diabetic and they walk for exercise. He testified they walk less now because his knee will hurt and he just doesn't feel like it. Petitioner testified he and his wife used to walk four or five times per week. Petitioner is also diabetic.

Petitioner testified he is currently being paid under the collective bargaining agreement that was entered into evidence as Respondent's Exhibit 4 and that he has no reason to believe his employment with Respondent is in jeopardy or his salary might be reduced because of the injury. He further testified neither his work hours nor the number of classes he teaches have been reduced as a result of the injury.

Petitioner testified the payment of the $40,519.48 of his employment contract was paid out over 26 pay periods from July 1st forward.

Respondent called one witness, Mr. Ronald C. Frillmann, who is the associate dean at the Lake Land facility at Western Illinois Correctional Center.

Mr. Frillmann is Petitioner's direct supervisor. He testified he and Petitioner had been friends for some years. Mr. Frillmann identified the collective bargaining agreement that was entered into evidence as Respondent's Exhibit 4 and confirmed that it was signed 7/01/10 and involves a three-year contract expiring in June of 2014.

Mr. Frillmann testified that he has no knowledge of any complaints regarding Petitioner's performance of his job since he has been returned to work. He testified there are procedures included in the collective bargaining agreement for discipline and/or dismissal of employees. He further testified he has no reason as Petitioner's supervisor to think there is any reason that his position with Respondent might be terminated for any reason.

The Arbitrator concludes:

1. **Earnings.**

   Section 10 of the Illinois Worker's Compensation Act defines "average weekly wage" as the earnings of the employee "in the employment in which he was working at the time of the injury." The Arbitrator concludes that at the time of his undisputed accident Petitioner was working as a full-time instructor for Respondent at the stipulated salary of $40,520 per year, producing an average weekly wage of $779.23. Petitioner experienced a change in his employment status when

he was hired as a full-time instructor and, therefore, only the earnings during that employment should be considered. The Arbitrator finds significant that the manner of computing his earnings changed from being paid by the class to becoming salaried, and that he became eligible for employee benefits after becoming a full-time instructor. See, Walter vs. Jacksonville Developmental Center 99 IIC 1031 and Rios vs. United Parcel Service 01 IIC 860.

2. Nature and Extent of the Injury.

Petitioner suffered tears to the lateral meniscus and medial meniscus of his left knee. He was also diagnosed with synovitis and patellofemoral chondromalacia of the left knee. Petitioner's left elbow and chest complaints appear to have resolved.

The injuries to Petitioner's left knee were addressed in a timely manner and he appears to have had a good recovery as indicated in the medical treatment notes. Petitioner underwent one arthroscopic procedure from which he had a satisfactory recovery. Petitioner was last seen for his knee by Dr. Wheeler on May 7, 2012. At that time the doctor indicated that Petitioner had improvement in his range of motion, good strength and balance between the quads and hamstrings. There was no effusion, swelling, or tenderness. At that time the doctor's plans and recommendations indicate Petitioner should increase his activities. No permanent disability was anticipated." Petitioner was told to recheck as needed. The Arbitrator further notes Petitioner was seen again on May 31, 2012 and, according to his testimony at arbitration, had seen Dr. Wheeler several other times for treatment of a thumb injury. However, there was no additional medical documentation that would indicate Petitioner had seen Dr. Wheeler or any other medical professionals for complaints of his knee after the May 7, 2012 release date.

Pursuant to Section 8.1b of the Act, the following criteria and factors must be considered in assessing permanent partial disability:

(a) A physician licensed to practice medicine in all of its branches preparing a permanent partial disability impairment report shall include an evaluation of medically defined and professionally appropriate measurements of impairment that include, but are not limited to: loss of range of motion, loss of strength; measured atrophy of tissue mass consistent with the injury; and any other measurements that establish the nature and extent of the impairment.

(b) Also, the Commission shall base its determination on the following factors:

(i) the reported level of impairment as assessed pursuant to the current edition of the AMA "Guides to the Evaluation of Permanent Impairment";
(ii) the occupation of the injured employee;
(iii) the age of the employee at the time of the injury;
(iv) the employee's future earning capacity; and
(v) evidence of disability corroborated by the treating medical records.

The Act provides that no single enumerated factor shall be the sole determinant of disability. With respect to these factors, the Arbitrator notes:

1. The reported level of impairment under the AMA Guides. With regard to the AMA impairment rating, the Arbitrator takes into account Dr. Monaco's rating of 8% impairment of a lower extremity. In determining that rating, Dr. Monaco acknowledged that he did not use the recommended "outcome measure" for lower extremity ratings and that he did not take into account any aggravation that Petitioner suffered to his pre-existing chondromalacia because he did not believe that condition was related to petitioner's accident. While Petitioner testified that Dr. Norregaard has told him he needs surgery that recommendation is not reflected in the doctor's office records. There is no August 31, 2012 office note setting forth any proposed treatment plan by Dr. Norregaard. (PX 6). The Arbitrator also notes that there were some other discrepancies between Petitioner's testimony and the medical records themselves with regard to Petitioner's care and treatment (for ex., physical therapy) While these discrepancies are not enough to undermine causation they create some "pause" regarding treatment recommendations and prospective care. Furthermore, looking at the "outcome measure" Dr. Monaco did utilize (albeit it was not the recommended one) Dr. Monaco agreed on cross-examination that Petitioner's score on the "PDQ" would place Petitioner in a "moderate" impairment category rather than a "mild" one as he indicated in his report.

As acknowledged by Dr. Monaco, "impairment" is not synonymous with "disability" and other factors must be considered to assess "disability." In assessing the weight to be assigned to the impairment rating as compared to the other enumerated factors, the Arbitrator notes these concessions by Dr. Monaco.

2. The occupation of the injured employee. Petitioner's current occupation is that of an instructor in Construction Occupations, a position he has held for a relatively short period of time. Previously, he was employed as a part-time instructor teaching computer-related courses. Prior to that Petitioner was employed as a dispatcher and he also had work experience in construction. This testimony was not rebutted by Respondent.

3. The age of the employee at the time of the injury. At the time of his accident, Petitioner was 53 years old. No evidence was presented as to how Petitioner's age might affect his disability.

4. The employee's future earning capacity. Petitioner testified that his current employer allows him to accommodate his ongoing problems in that he can sit and stand as desired and strenuous activity is not required. However, if he were to lose his current employment and be required to seek alternative employment, there could be issues with accommodation.

Petitioner's past skills are varied, however, which would theoretically present greater employment opportunities. No evidence was presented to show a diminishment in Petitioner's future earning capacity as a result of his injury.

5. Evidence of disability corroborated by the treating medical records. Petitioner testified credibly to ongoing problems with pain and stiffness in his injured left knee that limit his ability to stand and walk. These complaints are corroborated by medical records showing that he suffered medial and lateral meniscus tears as well as an aggravation of pre-existing chondromalacia, that these conditions were serious enough to require arthroscopic surgery as described above, and by references in Dr. Wheeler's treatment notes that Petitioner has suffered from persistent soreness through his last visit and had demonstrated muscle imbalance during his recovery. Though not a treating record, Petitioner's complaints are also objectively corroborated by Dr. Monaco's findings that Petitioner walked with a limp at the time of his evaluation and had swelling in his left knee, as well as the finding of "moderate" functional impairment on his "PDQ" evaluation.

Petitioner was off work for 4 4/7 weeks. He then resumed regular duty. Petitioner was released by Dr. Wheeler on May 7, 2012. At that time Dr. Wheeler anticipated no permanent disability.

After considering all of these factors, the Arbitrator concludes that Petitioner has sustained permanent partial disability of 20% loss of use of the left leg.

3. TTD Underpayment.

The period of temporary total disability was undisputed (December 2, 2011 through January 3, 2012); however, Petitioner claims an underpayment of TTD benefits based upon the average weekly wage/earnings dispute. The parties further stipulated that Petitioner was paid $1595.33 in TTD benefits. Based upon the Arbitrator's earnings determination there has been an underpayment of TTD benefits and Respondent shall pay same.

****

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

Gary D. Dorris,
Petitioner,
vs.

NO: 12WC 34462
14IWCC0069

Walgreen Co.,
Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Petitioner herein and notice given to all parties, the Commission, after considering the issues of causation, temporary total disability, medical, "present condition of ill-being causally related" and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof.

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed April 22, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that the Respondent shall have credit for all amounts paid, if any, to or on behalf of the Petitioner on account of said accidental injury.

The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 0 3 2014

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CJD/jrc
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Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

DORRIS, GARY
Employee/Petitioner

Case# **12WC034462**

WALGREENS CO
Employer/Respondent

14IWCC0069

On 4/22/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.09% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0327 LAW OFFICES OF JEROME LEFTON
AARON D LEFTON
1015 LOCUST ST SUITE 808
ST LOUIS, MO 63101

1433 McANANY VAN CLEVE & PHILLIPS PC
SHELLEY A WILSON
515 OLIVE ST SUITE 1501
ST LOUIS, MO 63101

STATE OF ILLINOIS)
)SS.
COUNTY OF **MADISON**)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

Gary D. Dorris
Employee/Petitioner

v.

Walgreen Co.
Employer/Respondent

14IWCC0069

Case # **12** WC **34462**

Consolidated cases: ___

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable **Gerald Granada**, Arbitrator of the Commission, in the city of **Collinsville**, on **3/21/13**. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☐ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other ___

FINDINGS

14IWCC0069

On the date of accident, **7/31/12**, Respondent ***was*** operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship ***did*** exist between Petitioner and Respondent.

On this date, Petitioner ***did*** sustain an accident that arose out of and in the course of employment.

Timely notice of this accident ***was*** given to Respondent.

Petitioner's current condition of ill-being ***is not*** causally related to the accident.

In the year preceding the injury, Petitioner earned $**51,567.88**; the average weekly wage was $**991.69**.

On the date of accident, Petitioner was **52** years of age, ***single*** with **0** dependent children.

Respondent ***has*** paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $**5,950.17** for TTD, $ for TPD, $ for maintenance, and $ for other benefits, for a total credit of $**5,950.17**.

Respondent is entitled to a credit of $ under Section 8(j) of the Act.

ORDER

Petitioner's claim for TTD and prospective medical care is denied.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

Signature of Arbitrator

4/16/13
Date

ICArbDec19(b)

APR 22 2013

14IWCC0069

Findings of Fact

Petitioner, has been employed with Walgreens for eleven years. On July 31, 2012, while unloading, lifting and stacking boxes, he complained of injury to his low back with pain down his legs. Despite this, Petitioner continued working that day and for the next two weeks performing his normal job duties. On August 14, 2012, while unloading another truck, Petitioner again complained of injury to his low back. He complained of low back pain and numbness in his legs.

On August 14, 2012, Petitioner treated at Missouri Baptist Hospital where he was diagnosed with low back pain, treated and released. He returned to Missouri Baptist Hospital on August 17, 2012, complaining of low back pain radiating into both hips and legs. He described a "pins and needles" sensation in both legs, left greater than right. Petitioner reported a prior low back injury 8 years earlier after a 15 foot fall, resulting in a diagnosed herniated disc. He described receiving injections in association with the prior injury with only temporary improvement. He described intermittent back pain since that time. He was diagnosed with low back pain with lumbar sacral radiculopathy. A lumbar MRI showed only minor degenerative changes. Petitioner received a right SI joint injection and an epidural steroid injection at L4-5.

Petitioner subsequently came under the care of Drs. Kennedy and Sturm. Dr. Kennedy diagnosed Petitioner with a lumbar strain and recommended treatment with Dr. Sturm. Dr. Kennedy did not believe Petitioner to be a surgical candidate. Dr. Sturm administered lumbar epidural steroid injections at L5 and L5-S1 on September 4 and 11, 2012. He administered bilateral facet joint injections at L4-5 and L5-S1 on November 29, 2012. He administered bilateral nerve blocks on January 2 and 17, 2013. He administered a right SI joint injection on January 8, 2013. Petitioner reported no relief from the numerous and repeated injections performed by Dr. Sturm. On December 17, 2012, Dr. Kennedy recommended a discogram, which was subsequently normal. Most recently, Dr. Kennedy has recommended an FCE.

On October 19, 2012, Petitioner attended an IME with Dr. DeGrange at the request of the Respondent . Dr. DeGrange diagnosed a lumbar strain and degenerative disc disease at L3-4, L4-5 and L5-S1. He found Petitioner's physical exam to be replete with nonorganic findings such as allodynia, give-way weakness in the bilateral lower extremities, and regional disturbances. He stated that Petitioner's subjective complaints were not substantiated by any objective findings either on physical exam or diagnostic studies. Dr. DeGrange found Petitioner's MRI to show age appropriate changes with no acute injury. He found no clinical indications for continued pain management treatments or for the prolonged and sustained levels of disability displayed by the Petitioner. He found the Petitioner capable of full duty work and placed him at MMI for his work injury. Dr. DeGrange found the Petitioner's injection treatment to be unreasonable and not necessary in light of his normal physical exam and diagnostic studies.

Dr. DeGrange testified via evidence deposition on February 8, 213, that an appropriate course of care for Petitioner's diagnosis of a lumbar strain would have been four weeks of physical therapy, activity modification, and the use of an anti-inflammatory medication. He testified that Petitioner's prolonged use of narcotic medications, receipt of pain management and receipt of multiple epidural injections was not reasonable or necessary treatment for his work injury. Dr. DeGrange repeatedly stressed that Petitioner's physical exam findings and normal diagnostic studies simply did not correlate with his extreme subjective complaints.

Dr. Kennedy testified by deposition taken on February 27, 2013, that Petitioner suffered a lumbar strain attributable to his work injury. Dr. Kennedy testified that he previously treated Petitioner's low back in 2008, 2009, and 2010 and that Petitioner's low back complaints never fully recovered prior to the current work injury. He testified that lumbar MRIs performed in 2008, 2009, and 2010 all showed Petitioner to have degenerative changes evidence by bulging at L3-4 and L4-5. With respect to Petitioner's current physical exam, Dr. Kennedy

testified that the only positive findings are subjective complaints of pain and range of motion loss. He testified that all objective testing, including spasm, muscle atrophy, leg length, straight leg raising and reflexes, were entirely normal. Dr. Kennedy testified that Petitioner's current MRI findings are normal with the exception of degenerative changes, which were also present on the MRIs from 2008, 2009, and 2010. Dr. Kennedy confirmed the normal discogram and testified that there is no evidence of nerve root impingement. He agreed that there is no objective evidence of any injury to Petitioner's low back. Finally, when questioned about Dr. DeGrange's findings of symptom magnification, Dr. Kennedy agreed that these types of findings are indicative of symptom magnification.

Petitioner has not worked since October 19, 2012, with the exception of November 5-19, 2012. Petitioner testified that his pain has improved only 30% throughout the duration of his treatment. He described current complaints of low back pain, bilateral hip pain, left leg and knee pain, tingling down his left leg, and occasional tingling down his right leg. He described his pain as 5/10 while on pain medication and 7/10 without pain medication. He takes two Vicodin per day and one Flexeril each night. On cross examination, Petitioner admitted to "at times" consuming up to 4 Hydrocodone per day and one Flexeril per night.

Petitioner also described prior injuries to his low back. In 2008, he fell 15 feet from a ladder and received treatment with Dr. Kennedy for low back pain. He missed 6 months from work for the 2008 injury, for which he experienced pain in his low back, hips, and left leg, and was treated with physical therapy and pain management. In 2009, Petitioner suffered a lifting injury to his low back. He treated with Dr. Kennedy and received physical therapy and a TENS unit. Following the 2009 incident, he was off work for 3-4 months and was treated with physical therapy and pain management. Petitioner described a third injury occurring in 2010, but testified that this injury primarily involved his cervical spine. He admitted that he also injured his low back from this 2010 accident and experienced complaints of low back and bilateral hip pain with radiation down his left leg. Petitioner testified that he received workers' compensation settlements for his 2008 and 2009 injuries totaling 15% MAW.

Based on the foregoing, the Arbitrator makes the following conclusions:

1. Petitioner has not met his burden of proof regarding the causal connection between his current condition of ill-being and his original work accident. Although the Arbitrator notes that the medical records support the Petitioner's claim that he sustained a back strain as a result of his non-disputed accident on July 31, 2012, it appears that the Petitioner's ongoing complaints are not supported by the various objective and diagnostic tests results – all of which have been normal. In this regard, the Arbitrator finds persuasive the opinions of Respondent's IME, in that the Petitioner has reached MMI and that further medical treatment is not warranted.

2. Petitioner has not met his burden of proof regarding the issue of temporary total disability and his entitlement to ongoing benefits. On this issue, the Arbitrator notes that all the objective findings and the diagnostic test results conducted by both the Petitioner's treating physicians and the Respondent's IME have been normal. While there is no doubt that the Petitioner sustained a back strain, there is some serious doubt that the Petitioner is medically unable to return to work because of this condition. It appears the main reason Petitioner has remained off work is because of his subjective complaints of pain. The Arbitrator notes that whenever the Petitioner has returned to his treating physician with such complaints, a physical exam or diagnostic test is ordered and all have shown normal results. There was no credible evidence presented that supports the Petitioner's claim that he cannot return to work. Accordingly, Petitioner's claim for TTD benefits is denied.

3. Based on the findings above, Petitioner's claims for medical expenses and prospective medical treatment are denied.

STATE OF ILLINOIS)
) SS.
COUNTY OF MADISON)

☒ Affirm and adopt (no changes)	☐ Injured Workers' Benefit Fund (§4(d))
☐ Affirm with changes	☐ Rate Adjustment Fund (§8(g))
☐ Reverse	☐ Second Injury Fund (§8(e)18)
	☐ PTD/Fatal denied
☐ Modify	☒ None of the above

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

George Timmons,

Petitioner,

vs.

NO: 11WC 42903

14IWCC0070

Work Force,

Respondent,

DECISION AND OPINION ON REVIEW

Timely Petition for Review under §19(b) having been filed by the Respondent herein and notice given to all parties, the Commission, after considering the issues of accident, causal connection, temporary total disability, incurred medical, prospective medical and being advised of the facts and law, affirms and adopts the Decision of the Arbitrator, which is attached hereto and made a part hereof. The Commission further remands this case to the Arbitrator for further proceedings for a determination of a further amount of temporary total compensation or of compensation for permanent disability, if any, pursuant to Thomas v. Industrial Commission, 78 Ill.2d 327, 399 N.E.2d 1322, 35 Ill.Dec. 794 (1980).

IT IS THEREFORE ORDERED BY THE COMMISSION that the Decision of the Arbitrator filed January 3, 2013, is hereby affirmed and adopted.

IT IS FURTHER ORDERED BY THE COMMISSION that this case be remanded to the Arbitrator for further proceedings consistent with this Decision, but only after the latter of expiration of the time for filing a written request for Summons to the Circuit Court has expired without the filing of such a written request, or after the time of completion of any judicial proceedings, if such a written request has been filed.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent pay to Petitioner interest under §19(n) of the Act, if any.

IT IS FURTHER ORDERED BY THE COMMISSION that Respondent shall have credit for all amounts paid, if any, to or on behalf of Petitioner on account of said accidental injury.

Bond for the removal of this cause to the Circuit Court by Respondent is hereby fixed at the sum of $100.00. The party commencing the proceedings for review in the Circuit Court shall file with the Commission a Notice of Intent to File for Review in Circuit Court.

DATED: FEB 0 3 2014
o012814
CJD/jrc
049

Charles J. DeVriendt

Michael J. Brennan

Ruth W. White

ILLINOIS WORKERS' COMPENSATION COMMISSION
NOTICE OF 19(b) DECISION OF ARBITRATOR

TIMMONS, GEORGE
Employee/Petitioner

Case# **11WC042903**

14IWCC0070

WORK FORCE
Employer/Respondent

On 1/3/2013, an arbitration decision on this case was filed with the Illinois Workers' Compensation Commission in Chicago, a copy of which is enclosed.

If the Commission reviews this award, interest of 0.12% shall accrue from the date listed above to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

A copy of this decision is mailed to the following parties:

0969 THOMAS C RICH PC
#6 EXECUTIVE DR
SUITE 3
FAIRVIEW HTS, IL 62208

0693 FEIRICH MAGER GREEN & RYAN
PIETER SCHMIDT
2001 W MAIN ST PO BOX 1570
CARBONDALE, IL 62903

14IWCC0070

STATE OF ILLINOIS)
)SS.
COUNTY OF MADISON)

☐ Injured Workers' Benefit Fund (§4(d))
☐ Rate Adjustment Fund (§8(g))
☐ Second Injury Fund (§8(e)18)
☒ None of the above

ILLINOIS WORKERS' COMPENSATION COMMISSION
ARBITRATION DECISION
19(b)

George Timmons
Employee/Petitioner

v.

Work Force
Employer/Respondent

Case # 11 WC 42903

Consolidated cases: _____

An *Application for Adjustment of Claim* was filed in this matter, and a *Notice of Hearing* was mailed to each party. The matter was heard by the Honorable William R. Gallagher, Arbitrator of the Commission, in the city of Collinsville, on October 24, 2012. After reviewing all of the evidence presented, the Arbitrator hereby makes findings on the disputed issues checked below, and attaches those findings to this document.

DISPUTED ISSUES

A. ☐ Was Respondent operating under and subject to the Illinois Workers' Compensation or Occupational Diseases Act?
B. ☐ Was there an employee-employer relationship?
C. ☒ Did an accident occur that arose out of and in the course of Petitioner's employment by Respondent?
D. ☐ What was the date of the accident?
E. ☐ Was timely notice of the accident given to Respondent?
F. ☒ Is Petitioner's current condition of ill-being causally related to the injury?
G. ☐ What were Petitioner's earnings?
H. ☐ What was Petitioner's age at the time of the accident?
I. ☐ What was Petitioner's marital status at the time of the accident?
J. ☒ Were the medical services that were provided to Petitioner reasonable and necessary? Has Respondent paid all appropriate charges for all reasonable and necessary medical services?
K. ☒ Is Petitioner entitled to any prospective medical care?
L. ☒ What temporary benefits are in dispute?
☐ TPD ☐ Maintenance ☒ TTD
M. ☐ Should penalties or fees be imposed upon Respondent?
N. ☐ Is Respondent due any credit?
O. ☐ Other _____

FINDINGS

On the date of accident, May 11, 2011, Respondent *was* operating under and subject to the provisions of the Act.

On this date, an employee-employer relationship *did* exist between Petitioner and Respondent.

On this date, Petitioner did sustain an accident that arose out of and in the course of employment.

Timely notice of this accident was given to Respondent.

Petitioner's current condition of ill-being is causally related to the accident.

In the year preceding the injury, Petitioner earned $3,059.58; the average weekly wage was $339.95.

On the date of accident, Petitioner was 52 years of age, married with 0 dependent child(ren).

Respondent has not paid all reasonable and necessary charges for all reasonable and necessary medical services.

Respondent shall be given a credit of $10,046.73 for TTD, $0.00 for TPD, $0.00 for maintenance, and $0.00 for other benefits, for a total credit of $10,046.73.

Respondent is entitled to a credit of $27,875.38 under Section 8(j) of the Act.

ORDER

Pursuant to the agreement of the parties, case number 11 WC 42978 is dismissed.

Respondent shall pay reasonable and necessary medical expenses as identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $27,875.38 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in section 8(j) of the Act.

Respondent shall authorize and pay for prospective medical treatment including, but not limited to, the MRI and subsequent treatment that has been recommended by Dr. Houle.

Respondent shall pay Petitioner temporary total disability benefits of $253.00 per week for 75 weeks commencing May 17, 2011, through October 24, 2012, as provided in Section 8(b) of the Act.

In no instance shall this award be a bar to subsequent hearing and determination of an additional amount of medical benefits or compensation for a temporary or permanent disability, if any.

RULES REGARDING APPEALS Unless a party files a *Petition for Review* within 30 days after receipt of this decision, and perfects a review in accordance with the Act and Rules, then this decision shall be entered as the decision of the Commission.

STATEMENT OF INTEREST RATE If the Commission reviews this award, interest at the rate set forth on the *Notice of Decision of Arbitrator* shall accrue from the date listed below to the day before the date of payment; however, if an employee's appeal results in either no change or a decrease in this award, interest shall not accrue.

William R. Gallagher, Arbitrator

December 31, 2012
Date

ICArbDec19(b)

JAN 3 - 2013

Findings of Fact

There were two Applications for Adjustment of Claim filed on behalf of Petitioner in regard to this claim both of which alleged that Petitioner sustained a work-related accident on May 10, 2011, to his right knee/leg. The Applications were identical except that in 11 WC 42903 the Respondent was Workforce and in 11 WC 42978 the Respondent was Gilster-Mary Lee. Both Respondents were represented by the same law firm. At trial, both Petitioner's and Respondent's counsel stipulated that the appropriate Respondent was Workforce and that case 11 WC 42978 against Gilster-Mary Lee would be dismissed.

The Application alleged that Petitioner sustained an accidental injury arising out of and in the course of his employment for the Respondent, Workforce, on May 10, 2011. The Application stated Petitioner sustained an injury to his right knee/leg as a result of walking upstairs and jumping in and out of machines. This case was tried as a 19(b) proceeding and Petitioner sought an order for medical bills, prospective medical treatment and temporary total disability benefits. Respondent disputed liability on the basis of accident and causal relationship.

Petitioner testified that on May 10, 2011, he was employed by Respondent which is a temporary agency that supplies workers to local employers with the agreement that if the individual completes a 90 day probationary period, he/she will be hired as a full-time employee. On the date of accident, Petitioner was two weeks away from completion of this probationary period.

Petitioner testified that on May 10, 2011, he was operating a pasta machine. This machine is a very large piece of equipment and it is necessary to walk up and down stairs to access various components of the machine. Operation of this machine required the Petitioner to push buttons and periodically (40 to 50 times during a work day) jump off of the machine and go up and down stairs to make necessary adjustments. As Petitioner was in the process of operating this machine, an alarm went off which meant that something was stuck in the machine and that there was a malfunction. When Petitioner heard the alarm, he responded by running up the stairs to turn off the machine and fix whatever the problem was. Petitioner testified that when such an alarm goes off, an immediate response is required because if the situation is not addressed quickly, both the machine and pasta product contained in it may be damaged. As Petitioner was running up the steps to the machine, he felt something twist in his right knee.

Following the accident Petitioner went to the ER of Sparta Community Hospital. The history in the hospital records stated Petitioner was walking upstairs and thought he may have twisted his knee. An x-ray of the right knee was obtained which was negative. Petitioner was given some medication and authorized to work light duty only with the assistance of crutches. On that same day, Petitioner was given a drug screening test (the results of which were negative) and in that report it stated that Petitioner "...went up stairs to answer alarm and foot caught in the step." In response to the question how the accident could have been prevented, Petitioner's response was "Slow down when answering alarm."

On May 11, 2011, Petitioner went to WorkCare Occupational Health where he was seen by Dr. Mark Austin. The history contained in the WorkCare record was that Petitioner was "...walking upstairs, foot got caught in last step, and somehow the knee twisted." Dr. Austin examined

Petitioner and suspected that there was a torn meniscus. Dr. Austin treated Petitioner conservatively but when he failed to improve, he ordered an MRI. An MRI was obtained on May 23, 2011, which revealed findings suggestive of a peripheral tear of the medial meniscus.

Dr. Austin referred Petitioner to Dr. Angela Freehill, an orthopedic surgeon. Dr. Freehill initially saw Petitioner on June 7, 2011. The history in her records stated that Petitioner sustained an accident at work on May 10, 2011, when he was going up the stairs, was on the last step, and he came down "wrong," twisting his right knee. Dr. Freehill examined the Petitioner and reviewed the x-ray and MRI that had been previously obtained. Dr. Freehill's initial diagnosis was a bony contusion and meniscus tear. She recommended a cortisone injection which Petitioner declined, so she prescribed physical therapy. Petitioner saw Dr. Freehill on June 28, 2011, and there was no improvement in his symptoms. At that time, Dr. Freehill recommended arthroscopy.

The Petitioner was authorized to be off work during the preceding periods of time.

On August 24, 2011, arthroscopy was performed which revealed no evidence of a meniscal tear; however, there was a large cartilaginous flap, and a defect going down into the trochlea, which is the anterior aspect of the femur and the joint with the patella. Dr. Freehill described this as a very large grade 4 lesion. Dr. Freehill was deposed on September 25, 2012, and her deposition was received into evidence at trial. When Dr. Freehill was question about whether there was a causal relationship between the accident and the condition she observed in Petitioner's right knee, she stated that the "...trochlear cartilage lesion with a – – what I assume is a twist or a kind of a flexed knee injury, where he went to plant his knee on the step, his knee got caught, and he had I would assume, a flexion injury to the knee, where there is a shearing force of the patella directly on the trochlea. With an angle or a twist, I can see that the patella would forcefully impact the trochlea and could possibly shear away some of the cartilage there, leaving a defect that we saw in surgery." It was Dr. Freehill's opinion that this is what happened in this case.

Dr. Freehill saw Petitioner on September 2, 2011, and recommended that Petitioner consider ACI or Genzyme surgery, which is a cartilage transplant type of surgery. She referred Petitioner to Dr. Ben Houle, her partner because of his experience in performing this particular type of surgery. Dr. Houle saw Petitioner on September 21, 2011, and noted that at the time of the prior surgery, Petitioner was found to have a femoral trochlear divot secondary to a work injury. Dr. Houle performed surgery on October 13, 2011, which consisted of a femoral trochlear cartilage graft.

Petitioner was seen by Dr. Houle on October 28 and November 9, 2011, and his condition improved to where he was moved from a walker to a cane and finally to full weight beaing. Dr. Houle prescribed physical therapy which further improved his condition until November 29, 2011, at which time Petitioner was getting out of bed and, without any further incident, his knee simply buckled causing additional symptoms. Petitioner was seen by Dr. Houle that same day. Further physical therapy and medication improved Petitioner's symptoms to the point that on February 8, 2012, Petitioner informed Dr. Houle that he wanted to go back to work light duty while avoiding stair climbing. On February 24, 2012, Dr. Houle gave Petitioner a light duty slip with no squatting, climbing or lifting greater than 20 pounds. Petitioner continued to experience some swelling of the top portion of the right patella and when seen by Dr. Houle on June 20,

2012, Dr. Houle was attempting to obtain an MRI of Petitioner's right leg to determine if there was anything else of significance going on inside of the knee joint and proceed from there. This MRI has not been performed as Petitioner is waiting for authorization for additional medical treatment.

Petitioner testified at trial that since the time Dr. Houle released him to return to work with light duty restrictions, he has been attempting to find work but has been unsuccessful. He further testified that he would like to undergo the MRI scan that has been recommended and whatever follow-up treatment is indicated.

On February 18, 2012, Petitioner was examined by Dr. W. Christopher Kostman at the direction of the Respondent. Dr. Kostman was deposed on February 29 and March 6, 2012, and the deposition was received into evidence at trial. Dr. Kostman testified that Petitioner described an injury that occurred to his right knee on May 10, 2011, but opined that his current condition was not related to this injury stating that it was related to his genetics and weight. While he also opined that the arthroscopic procedure performed by Dr. Freehill was appropriate given the failure of conservative management, he was not certain that all conservative management had been pursued and would not have performed the second procedure. On cross-examination, Dr. Kostman acknowledged that Petitioner had no symptoms or problems with his knee prior to the accident and agreed that Petitioner had joint effusion immediately following the accident and acknowledged that Petitioner was on crutches because of the pain. He still, however, stated that he did not believe that the knee symptoms were a result of the work accident.

Conclusions of Law

In regard to disputed issue (C) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner sustained an accidental injury arising out of and in the course of his employment for Respondent on May 10, 2011.

In support of this conclusion the Arbitrator notes the following:

Petitioner was the only witness to testify at trial and he was a credible witness on his own behalf. Petitioner testified that he periodically had to jump on and off the machine and go up and down the stairs to access the components on the machine. Upon hearing the alarm, Petitioner responded by running up the steps because when the alarm went off, an immediate response was required to avoid damage to both the pasta machine and the pasta contained in it. This testimony was unrebutted.

The fact that the histories provided to the various medical providers described that Petitioner was "walking" or simply "going up" the stairs does not negate that Petitioner was responding to an alarm and moving at a faster than normal rate. It is noteworthy that in the report of the drug test, Petitioner stated that the accident may have been avoided by his slowing down when answering the alarm.

Petitioner sustained the injury to his right knee as he was in the process of responding to an alarm in haste because he did not want Respondent's machine or product to be damaged. While performing this job duty, Petitioner twisted his right knee and immediately felt pain and sought medical treatment shortly thereafter.

The Arbitrator thereby concludes that Petitioner was exposed to a risk of injury to a greater degree than the general public.

In regard to disputed issue (F) the Arbitrator makes the following conclusion of law:

The Arbitrator concludes that Petitioner's current condition of ill-being is causally related to the accident of May 10, 2011.

In support of this conclusion the Arbitrator notes the following:

Immediately following the accident, Petitioner had significant symptoms to his right knee and sought medical treatment. Prior to the accident, Petitioner had no right knee injuries or symptoms.

Dr. Freehill testified that the twisting type injury to the right knee sustained by Petitioner could have caused the pathology she observed which required the treatment provided by her and Dr. Houle.

The Arbitrator finds the opinion of Dr. Freehill to be more credible than that of Respondent's Section 12 examiner, Dr. Kostman, who opined that the accident late no role whatsoever in the right knee injury.

In regard to disputed issue (J) the Arbitrator makes the following conclusion of law:

The Arbitrator finds that all of the medical treatment provided to Petitioner was reasonable and necessary and Respondent is liable for the medical bills associated there with.

Respondent is to pay reasonable and necessary medical bills as identified in Petitioner's Exhibit 1 as provided in Sections 8(a) and 8.2 of the Act, subject to the fee schedule. Respondent shall be given a credit of $27,875.38 for medical benefits that have been paid, and Respondent shall hold Petitioner harmless from any claims by any providers of the services for which Respondent is receiving this credit as provided in Section 8(j) of the Act.

In regard to disputed issue (K) the Arbitrator makes the following conclusion of law:

Petitioner is entitled to prospective medical treatment including, but not limited to, the MRI recommended by Dr. Dr. Houle and subsequent treatment resulting therefrom.

In regard to disputed issue (L) the Arbitrator makes the following conclusion of law:

Petitioner is entitled to temporary total disability benefits of $253.00 per week for 75 weeks commencing May 17, 2011, through October 24, 2012, as provided in Section 8(b) of the Act.

In support of this conclusion the Arbitrator notes the following:

Petitioner has not been released for full duty by any physician, including Respondent's examiner. Dr. Houle placed Petitioner under work restrictions and has recommended additional diagnostic testing and possible treatment. In spite of the preceding, Petitioner has been attempting to find work within his restrictions but has not been successful in doing so.

William R. Gallagher, Arbitrator